




DATE: October 16, 2012

TO: Board of Water and Soil Resources' Members, Advisors, and Staff

FROM: John Jaschke, Executive Director 

SUBJECT: BWSR Board Meeting Notice – October 24, 2012

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, October 24, 2012, beginning at 9:00 a.m. The meeting will be held in the lower level Board Room at 520 Lafayette Road N., St. Paul. Parking is available in the lot directly in front of the building (see hooded parking area).

The following information pertains to agenda items:

COMMITTEE MEETINGS

Metro Water Planning Committee

- 1. Comfort Lake Forest Lake Watershed District Watershed Management Plan Amendment** - The plan amendment incorporates by reference the final Engineer's Report for the Sunrise River Water Quality & Flowage Project, which was initiated by petition from Chisago County in 2010. By incorporating the Engineer's Report the amendment recognizes the project is a water resource-based program encompassing a slate of capital project and program activities, provides more detailed descriptions of each component including refined estimated construction costs, provides for the project to be implemented over a period of time, and commits the district to a public process prior to ordering and implementing individual project components. The Metro Water Planning Committee met on October 1, 2012 and after review of the information, the Committee unanimously voted to recommend approval of the Amendment per the attached draft Order. **DECISION ITEM**
- 2. Elm Creek WMO Plan Amendment** - The final draft Amendment to the Elm Creek WMO Watershed Management Plan was filed with the Board on September 20, 2012. The amendment proposes to revise the implementation section by re-prioritizing programs and studies and adding capital improvement projects, and other implementation activities, in addition to extending the plan expiration to October 2014, the maximum timeframe of ten years allowed under statute. No comments were received during the public hearing that resulted in revisions to the draft Amendment. The Metro Water Planning Committee met on October 1, 2012 and after review of the information unanimously voted to recommend approval of the Amendment per the attached draft Order. **DECISION ITEM**

<i>Bemidji</i>	<i>Brainerd</i>	<i>Duluth</i>	<i>Fergus Falls</i>	<i>Mankato</i>	<i>Marshall</i>	<i>New Ulm</i>	<i>Rochester</i>
403 Fourth Street NW Suite 200 Bemidji, MN 56601 (218) 755-2600	1601 Minnesota Drive Brainerd, MN 56401 (218) 828-2383	394 S. Lake Avenue Suite 403 Duluth, MN 55802 (218) 723-4752	1004 Frontier Drive Fergus Falls, MN 56537 (218) 736-5445	1160 Victory Drive South Suite 5 Mankato, MN 56601 (507) 389-6784	1400 East Lyon Street Marshall, MN 56258 (507) 537-6060	261 Highway 15 South New Ulm, MN 56073 (507) 359-6074	3555 9 th Street NW Suite 350 Rochester, MN 55901 (507) 206-2889

Central Office / Metro Office

520 Lafayette Road North

Saint Paul, MN 55155

Phone: (651) 296-3767

Fax: (651) 297-5615

3. **Chisago County Priority Concerns Scoping Document (PCSD)** - BWSR received the Chisago County Priority Concerns Scoping Document (PCSD) on August 10, 2012. The state review agencies were notified and submitted their comments to BWSR. The BWSR Metro Water Planning Committee (Committee) met on October 1, 2012, to discuss the content of the PCSD, state review agency comments and recommendations for the content of the final Plan. All required components of the PCSD have been covered and the priority concerns to be addressed are deemed to be appropriate. The Committee voted unanimously to recommend the attached draft official state comment letter pertaining to the review of the Chisago County PCSD be considered and sent to the county. **DECISION ITEM**

NEW BUSINESS

- 1A. **Adoption of Rule Amendments for the Erosion Control and Water Management and Reinvest in Minnesota Reserve programs (Rule Chapter 8400)** - The Board is being requested to adopt the recommendation of the Grants Program and Policy Committee regarding the Erosion Control and Water Management Program and Reinvest in Minnesota Reserve Programs (Rule Chapter 8400). These rules have been under development for more than two years, and following recent discussions with soil and water conservation districts, is now ready to proceed to final adoption. **DECISION ITEM**
- 1B. **Adoption of the Proposed Erosion Control and Water Management Program Policy** - Statutory changes enacted in 2009 require the Board to adopt a policy for the Erosion Control and Water Management Program (commonly referred to as Cost-Share). The draft policy has been developed by staff concurrently with the Rule that is the subject of the above agenda item. **DECISION ITEM**
2. **2013 Proposed BWSR Board Meeting Schedule** – The BWSR Board meets the fourth Wednesday of the month (unless noted). The proposed meeting dates for 2013 will be considered for adoption. **DECISION ITEM**
3. **2012 Strategic Plan Report Card** - The Strategic Plan Report Card is an annual summary of accomplishments for each of the action items in the BWSR 2012 Strategic Plan Update. The Public Relations, Outreach, and Strategic Planning (PROSP) Committee has committed to provide such a report to the Board each year. It is also listed as one of the action items in the plan. The PROSP Committee will be meeting the evening before the Board meeting to finalize the report card and pass it on to the Board. The final version of the Report Card will be distributed to Board members as a handout at the meeting. **INFORMATION ITEM**
4. **BWSR 25th Anniversary** – The Board of Water and Soil Resources was established in October 1987. A short presentation will highlight some of the BWSR accomplishments the past 25 years. **INFORMATION ITEM**

If you have any questions regarding the agenda, please feel free to give me a call at 651-296-0878. The Board meeting is expected to adjourn about noon. I look forward to seeing you on October 24th!

BOARD OF WATER AND SOIL RESOURCES
520 LAFAYETTE ROAD N.
LOWER LEVEL CONFERENCE ROOM
ST. PAUL, MINNESOTA 55155
WEDNESDAY, OCTOBER 24, 2012

PRELIMINARY AGENDA

9:00 AM CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

ADOPTION OF AGENDA

MINUTES OF SEPTEMBER 26, 2012 BOARD MEETING

PUBLIC ACCESS FORUM (10-minute agenda time, two-minute limit/person)

CONFLICT OF INTEREST DECLARATION

INTRODUCTION OF NEW BWSR STAFF

- Tim Koehler, Interim RIM Coordinator

RECOGNITION OF KEVIN LINES' RETIREMENT

REPORTS

- Chair – Brian Napstad
- Administrative Advisory Committee – Brian Napstad
- Executive Director – John Jaschke
- Dispute Resolution Committee – Gerald Van Amburg
- Wetlands Committee – Gerald Van Amburg
- Grants Program & Policy Committee – Paul Langseth
- Public Relations, Outreach & Strategic Planning Committee – Keith Mykleseth
- RIM Reserve Management Planning Committee – Gene Tiedemann
- Drainage Work Group – Tom Loveall

COMMITTEE RECOMMENDATIONS

Metro Water Planning Committee

1. Comfort Lake Forest Lake Watershed District Watershed Management Plan Amendment – Melissa Lewis – **DECISION ITEM**
2. Elm Creek WMO Plan Amendment – Brad Wozney – **DECISION ITEM**
3. Chisago County Priority Concerns Scoping Document (PCSD) – Mary Kells – **DECISION ITEM**

NEW BUSINESS

- 1A. Adoption of Rule Amendments for the Erosion Control and Water Management and Reinvest in Minnesota Reserve Programs (Rule Chapter 8400) – Dave Weirens – **DECISION ITEM**
- 1B. Adoption of the Proposed Erosion Control and Water Management Program Policy – Dave Weirens – **DECISION ITEM**
2. 2013 Proposed BWSR Board Meeting Schedule – John Jaschke – **DECISION ITEM**
3. 2012 Strategic Plan Report Card – Don Buckhout – **INFORMATION ITEM**
4. BWSR 25th Anniversary – Jen Maleitzke/John Jaschke – **INFORMATION ITEM**

AGENCY REPORTS

- Minnesota Department of Agriculture – Matthew Wohlman
- Minnesota Department of Health – Chris Elvrum
- Minnesota Department of Natural Resources – Tom Landwehr
- Minnesota Extension Service – Faye Sleeper
- Minnesota Pollution Control Agency – Rebecca Flood

ADVISORY COMMENTS

- Association of Minnesota Counties – Annalee Garletz
- Minnesota Association of Conservation District Employees – Matt Solemsaas
- Minnesota Association of Soil & Water Conservation Districts – LeAnn Buck
- Minnesota Association of Townships – Sandy Hooker
- Minnesota Association of Watershed Districts – Ray Bohn
- Natural Resources Conservation Service – Krista Olson

UPCOMING MEETINGS

- BWSR Academy, October 29 – 31, Brainerd
- Next BWSR Board Meeting – December 12, 2012
- MAWD Annual Meeting, November 29 – December 1, Alexandria
- MASWCD Annual Meeting, December 2-4, Bloomington
- AMC Annual Meeting, December 3-4, St. Cloud

Noon

ADJOURN

**BOARD OF WATER AND SOIL RESOURCES
520 LAFAYETTE ROAD N.
LOWER LEVEL CONFERENCE ROOM
ST. PAUL, MINNESOTA 55155
WEDNESDAY, SEPTEMBER 26, 2012**

BOARD MEMBERS PRESENT:

Greg Buzicky, MDA; Joe Collins, Jack Ditmore, Quentin Fairbanks, Sandy Hooker, Tom Landwehr, DNR; Paul Langseth, Tom Loveall, Keith Mykleseth, Brian Napstad, Faye Sleeper, MES; Steve Sunderland, Gene Tiedemann, Gerald Van Amburg, Doug Wetzstein, MPCA

BOARD MEMBERS ABSENT:

Bob Burandt
Chris Elvrum, MDH
Christy Jo Fogarty
Todd Foster
John Meyer

STAFF PRESENT:

Mary Jo Anderson, Angie Becker-Kudelka, Tim Dykstal, Travis Germundson, Tim Gillette, Jim Haertel, John Jaschke, Al Kean, Melissa Lewis, Jen Maleitzke, Dennis Rodacker, Dave Weirens

OTHERS PRESENT:

Keith Hanson, Clean Water Council

Chair Napstad called the meeting to order at 9:05 a.m.

PLEDGE OF ALLEGIANCE

**** 12-77 ADOPT AGENDA** – Moved by Quentin Fairbanks, seconded by Paul Langseth, to adopt the agenda as presented. Motion passed on a voice vote.

**** 12-78 MINUTES OF AUGUST 23, 2012 BOARD MEETING** – Moved by Keith Mykleseth, seconded by Gerald Van Amburg, to approve the minutes of August 23, 2012 as circulated. Motion passed on a voice vote.

INTRODUCTION OF NEW BWSR STAFF

- Tim Gillette, Conservation Drainage Engineer
- Dennis Rodacker, Senior Wetland Specialist

REPORTS

Chair's Report – Brian Napstad reported that he attended the EQB meeting last week; discussion included the controversial topic of mining frac sands in southeast Minnesota. The industry perspective in support of mining frac sands was presented. EQB has provided an opportunity for all sides to present information as the assessment and evaluation continues.

Chair Napstad reported that the Governor's Executive Order directed EQB to host an Environmental Congress that will be held in February 2013; with citizen forums to be held statewide in November and December. State leaders will be engaging with Minnesotans about the present and future of our state's environmental and economic health, key points to review include the permitting process and efficiencies. Chair Napstad encouraged board members to attend. The EQB is scheduled to review improvements to environmental governance and coordination, with adoption of an environment and energy report card in November.

Chair Napstad reported that the Wetland Committee will be working on the Governor's Executive Order on wetlands.

Chair Napstad attended the Red River Watershed Management Board (RRWMB) meeting and tour last week in Thief River Falls; he expects further conservation and flood control efforts via the multi-agency mitigation agreement.

Administrative Advisory Committee (AAC) – Brian Napstad reported that the AAC did not meet this morning.

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Executive Director's Report – John Jaschke reported that Kevin Lines announced his retirement this week. A recognition and celebration for Kevin will be held on October 4. BWSR will recruit to fill his position.

John reported that 11 candidates interviewed for the assistant director position, follow-up interviews are in progress.

John acknowledged the new BWSR banner in the shared Board room. John reviewed information in Board Members' packets.

12-79 ** Tom Landwehr reported that he had the pleasure of working with Kevin Lines at DNR and at BWSR. He would like BWSR to recognize the success of the RIM program under Kevin's leadership. Moved by Tom Landwehr, seconded by Sandy Hooker, to establish a resolution to be presented to Kevin Lines recognizing him for tremendous accomplishments and achievements in conservation. Motion passed on a voice vote. Tom Landwehr will work with staff to develop a resolution to be presented to Kevin.

Steve Sunderlund stated there's interest in a meeting to be held in southwestern Minnesota on the WCA Executive Order. He stated that meetings are being held in other parts of the state but not in the southwest.

Chair Napstad thanked Steve Sunderlund, Jack Ditmore, Keith Mykleseth, and Gerald Van Amburg for their interest to serve on the new BWSR Audit Committee.

Dispute Resolution Committee (DRC) – Travis Germundson reported that there are currently 11 appeals pending; he provided a brief status report on the appeals. Travis reported that he is developing a training session for the DRC to be held in the near future.

Wetlands Committee – Gerald Van Amburg reported that the Wetlands Committee will meet today immediately following adjournment of the Board meeting. Stakeholder sector outreach meetings are being conducted statewide. Joe Collins asked about public comment if persons are unable to attend the statewide meetings; Gerald stated that written comments could be submitted.

Grants Program & Policy Committee – Paul Langseth reported that the Grants Program and Policy Committee will meet on November 28, 2012.

Public Relations, Outreach & Strategic Planning Committee (PROSPC) – Keith Mykleseth reported that the PROSPC will meet on October 23, 2012.

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Drainage Work Group – Tom Loveall reported that the Drainage Work Group met on September 20, 2012; he presented information discussed at their meeting. The next Drainage Work Group meeting is October 11, 2012. Discussion followed.

COMMITTEE MEETINGS

Metro Water Planning Committee

Brown's Creek Watershed District Amendment to Watershed Management Plan –

12-80 ** Melissa Lewis reported that the Brown's Creek Watershed District was established from the Brown's Creek Joint Powers Agreement Watershed Management Organization in October 1997. The entire watershed is approximately 29.4 square miles and contains portions of the cities of Grant, Hugo, Lake Elmo, Oak Park Heights, and Stillwater and the Towns of May and Stillwater. The Amendment incorporates specific capital improvements, best management practices, and management actions identified in lake management plans and Total Maximum Daily Load Implementation Plans completed since the current Plan was approved. The Metro Water Planning Committee met on September 5, 2012. After review of the information, the Committee unanimously voted to recommend approval of the Amendment. Moved by Keith Mykleseth, seconded by Joe Collins, to approve the Brown's Creek Watershed District Amendment to the Watershed Management Plan. Motion passed on a voice vote.

Black Dog Watershed Management Organization Revised Watershed Management Plan –

12-81 ** Melissa Lewis reported that the Black Dog Watershed Management Organization (WMO) was established in 1985 through a joint powers agreement. The WMO encompasses approximately 26 square miles in northwestern Dakota County, covering parts of the cities of Apple Valley, Burnsville, Eagan, and Lakeville. The Plan sets the vision and guidelines for managing surface waters within the boundaries, provides data and other background information, outlines the applicable regulations, assesses watershed-wide and resource-specific issues, sets goals and policies for the WMO and its members, and lists implementation tasks to achieve the goals. The Metro Water Planning Committee reviewed the information on September 5, 2012, and unanimously voted to recommend approval of the revised watershed management plan. Moved by Faye Sleeper, seconded by Joe Collins, to approve the Black Dog Watershed Management Organization Revised Watershed Management Plan. Motion passed on a voice vote.

Chair Napstad suggested conducting a refresher session on water plans in the metro area and greater Minnesota at an upcoming Board meeting.

Northern Water Planning Committee

Cook County Priority Concerns Scoping Document – Quentin Fairbanks reported that the Cook County Board of Commissioners adopted a resolution March 22, 2011 to

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revise and update their current comprehensive local water management plan. The County distributed their Priority Concerns Scoping Document to the required state agencies for review July 20, 2012. Comments were received from the Environmental Quality Board, Department of Health, Department of Agriculture, Department of Natural Resources and Pollution Control Agency. Agency comments will be incorporated into the final plan, as recommended by the Board Conservationist. The Northern Water Planning Committee met on September 12, 2012, reviewed the Cook County Priority Concerns Scoping Document and unanimously recommends approval. Moved by Quentin Fairbank, seconded by Tom Loveall, to approve the Cook County Priority Concerns Scoping Document. Discussion followed. Motion passed on a voice vote.

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12-82

Mille Lacs County Five Year Plan Amendment – Gerald Van Amburg reported that on August 24, 2007, the Board of Water and Soil Resources approved Mille Lacs County's Comprehensive Local Water Management Plan for a ten year period from 2006-2016 with a required amendment by 2011. On May 3, 2011, the County passed a resolution to begin the amendment process. The amended plan was submitted to the Board Conservationist on August 6, 2012. The Northern Water Planning Committee met on September 12, 2012, reviewed the plan amendment, suggested that Mille Lacs County add an implementation schedule dealing with invasive species in the Plan, and recommends approval of the update through December 2016. Moved by Gerald Van Amburg, seconded by Quentin Fairbanks, to approve the Mille Lacs County five year Plan amendment. Keith Mykleseth reported that Molly McGregor quickly added the inclusion of the aquatic invasive species concerns to the Plan. Discussion followed. Joe Collins asked how we handle the costs involved and expense components for the Plan. Motion passed on a voice vote.

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12-83

Jack Ditmore asked what BWSR does when the plan expires. John Jaschke explained that the plan is not required to update at five years; however, statute requires an update at ten years or the plan expires. Jack also asked where can he see the plan before the Board meetings. John explained that the plan is available on the County website or BWSR staff can provide a copy of the plan. Joe Collins requested that the web-link to the plan be made available to board members. Steve Sunderland asked about Robert Hoefert listed as an SWCD supervisor and county commissioner in the Mille Lacs County Plan– a conflict of interest or an error.

Sherburne County Five Year Plan Amendment – Keith Mykleseth reported that on August 24, 2007, the Board of Water and Soil Resources approved Sherburne County's Comprehensive Local Water Management Plan for a ten year period from 2007-2017 with a required amendment by 2012. On February 6, 2012, the County passed a resolution to begin the amendment process. The amended plan was submitted to the

Board Conservationist on July 31, 2012. The Northern Water Planning Committee met on September 12, 2012, reviewed the plan amendment and recommends approval of the update through December 2016. Moved by Keith Mykleseth, seconded by Quentin Fairbanks, to approve the Sherburne County five year Plan amendment as recommended. Jack Ditmore asked if agency comments are addressed. John stated that comments are addressed unless noted. Chair Napstad stated that the board conservationist memo to the regional water planning committees vary from the northern and southern region. Chair Napstad suggested that a format/outline be used by board conservationists for consistency. Motion passed on a voice vote.

Chair Napstad called for a break in the meeting at 10:43 a.m. The meeting reconvened at 10:55 a.m.

Red River Basin Watershed District Plan Expiration Date Extension – Gene Tiedemann reported that the reason for extending the expiration date of these plans is to synchronize the Watershed District water management plan update schedule and process with the MPCA's water quality monitoring and assessment schedule for Minnesota's 81 major watersheds. Moved by Gene Tiedemann, seconded by Keith Mykleseth, to approve the extension dates for the purpose of effectively synchronizing county comprehensive water management planning efforts; the BWSR will allow counties in the Red River Basin to petition BWSR to extend county local water management plan expiration dates to enable more effective coordination with partner watershed districts. Discussion followed.

John stated that the synchronized dates are important as the resolution is tied to a BWSR policy related to the LGU eligibility to apply for BWSR grants. BWSR Clean Water Fund policy states that eligible applicants include local governments or joint powers boards working under a current state approved and locally adopted local water management plan or SWCD comprehensive plan. The resolution would provide a more flexible approach to synchronizing county local water management planning with watershed district planning schedule.

Chair Napstad stated the importance of the synchronized dates; MPCA to recognize the effort needed to stay on schedule. Doug Wetzstein stated that MPCA is on board with this and is working on efficiencies. Keith Mykleseth and Gerald Van Amburg commented that MPCA does have good committed staff working on the plans. John thanked all the partners involved for efforts to get this done. Motion passed on a voice vote.

Wilkin County CLWM Five-Year Update Extension – Keith Mykleseth reported that Wilkin County requested an extension to the required five-year update of the implementation section of the Wilkin County Local Water Plan to December 31, 2014.

The extra time will enable the Wilkin County Local Water Plan and Buffalo Red River Watershed District Plan update to happen simultaneously. The Northern Water Planning Committee reviewed the request and recommend approval of the extension. Moved by Keith Mykleseth, seconded by Paul Langseth, to approve the Wilkin County five year extension until December 31, 2014. Motion passed on a voice vote.

NEW BUSINESS

Clean Water Council (CWC) Budget Development Process – Keith Hanson, CWC Chairman, distributed the CWC FY14-15 Funding Priorities and provided background information. Keith explained that in November 2008, Minnesotans passed the Clean Water, Land and Legacy Amendment to the Minnesota Constitution to: protect drinking water sources; to protect, enhance, and restore wetlands, prairies, forests, and fish, game, and wildlife habitat; to preserve arts and cultural heritage; to support parks and trails; and to protect, enhance, and restore lakes, rivers, streams, and groundwater. Thirty-three percent of the sales tax revenue from the Legacy amendment is dedicated for the Clean Water Fund, and may only be spent to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation. At least five percent of the Clean Water Fund must be spent to protect drinking water sources. 2011 Special Session law requires the Clean Water Council recommend to the governor and legislature the manner in which money from the Clean Water Fund monies be appropriated.

Keith briefly commented on the Budget Outcomes Committee (BOC) proposed appropriation recommendations to BWSR. It was noted that funding guidance from Minnesota Statute 114D is nearly the same as the Minnesota Constitution language.

Keith Mykleseth strongly advocated the River Watch Program. Gerald Van Amburg stated that the educational aspect of the River Watch Program is for our youth and important. Gerald Van Amburg thanked Keith Hanson and the CWC for what they do. Keith stated that the CWC is looking to improve where the funding is appropriated; he looks to BWSR for their support. Chair Napstad thanked Keith for his presentation.

Grants Monitoring Report – Tim Dykstal reported that on June 22, 2011, BWSR adopted the Grants Monitoring, Reconciliation and Verification Policy, which provided that BWSR staff will annually monitor all grants; competitive conservation program grants will be paid in three scheduled payments; and financial verification of grant reconciliations will be performed on ten percent of all BWSR grants annually. The Grants Monitoring Report was tabled at the June 27, 2012 Board Meeting and requested to be on the agenda today. Tim reviewed the Conservation Program and Operations Grant Monitoring; Project Grants Payments Schedule; and Grant Verifications. Tim explained the next steps will be to continue to improve its grants

monitoring efforts in the coming year; and the report will come before the newly established BWSR Audit Committee. Keith Mykleseth commended staff on their adaption of what needs to be done and how effectively they do it. Greg Buzicky asked Tim about tracking his time for grants monitoring. John Jaschke explained the proportional and efficiency approach, to oversee grants; it's a balance between compliance and cooperation. Chair Napstad thanked Tim for his thorough report.

AGENCY REPORTS

Minnesota Department of Agriculture (MDA) – Greg Buzicky reported that the next meeting of the Minnesota Ag Water Quality Certification Program (MAWQCP) is October 29; the Advisory Committee will meet on November 13-14. Chair Napstad thanked Greg for attending the meeting today on behalf of Matt Wohlman.

Minnesota Department of Natural Resources (DNR) – Tom Landwehr attended the Red River Watershed Management Board meeting and tour last week in the Red River Valley. He stated that there are good outcomes from that meeting, and the importance of attaining more multi-benefit projects in the northwest. He is calling on DNR staff to actively support and use public funding to get projects implemented for natural resource enhancements.

Tom reported on an article in the *StarTribune* on September 23, 2012, regarding the loss of grasslands, native prairies and CRP – this is significant as it effects water quality, and wildlife depends upon grasslands. Agencies and other organizations are recognizing the effects; and are exploring new ideas such as a grazing incentive to keep grass on the landscape as an agricultural base. The Minnesota Prairie Plan outlines how to target protection and restoration in future years. Tom stated that BWSR has a big role in grassland restoration with the RIM Program, the need is there for BWSR's continued and expanded involvement.

Minnesota Extension Service (MES) – Faye Sleeper reported that the Water Resources Center is hosting a seminar by Otto Doering, "Looking Back to the Coming Farm Bill: The More Things Change the More They Stay the Same!" on October 4, at the University of Minnesota. Faye reported that the Annual Water Resources Conference will be held October 16-17, at St. Paul River Center. Faye encouraged board members attendance. If interested, information is available on the website: <http://wrc.umn.edu/news/index.htm>

Minnesota Pollution Control Agency (MPCA) – Doug Wetzstein reported that the Clean Water Act marks its 40th anniversary on October 18. Doug reported that MPCA Commissioner Stine will meet with Wisconsin officials on September 28 in the middle of the St. Croix River; an event to recognize the multi-state effort.

ADVISORY COMMENTS

Minnesota Association of Townships (MAT) – Sandy Hooker reported that MAT directors and staff will be meeting with school districts and cities to discuss issues of common interest to provide a united front before the legislature. Sandy reported that the MAT Annual Conference will be held November 15-17, at the River's Edge Conference Center in St. Cloud; board members were invited to attend. Sandy stated that she appreciated the great Board tour on August 22 in Lincoln and Lyon Counties.

UPCOMING MEETINGS

- BWSR Board Meeting – October 24, 2012
- Wetland Committee: immediately following September 26th Board Meeting
- PROSP Committee: Oct. 23
- MAWD Annual Meeting, November 29 – December 1, Alexandria
- MASWCD Annual Meeting, December 2-4, Bloomington
- AMC Annual Meeting, December 3-4, St. Cloud

** Moved by Sandy Hooker, seconded by Paul Langseth, to adjourn the meeting at 12:15 p.m.
12-87 Motion passed on voice vote.

Respectfully submitted,

Mary Jo Anderson
Recorder



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Dispute Resolution Committee Report^L

Meeting Date: October 24, 2012

Agenda Category: ☐ Committee Recommendation ☐ New Business ☐ Old Business

Item Type: ☐ Decision ☐ Discussion ☒ Information

Section/Region: Land and Water Section

Contact: Travis Germundson

Prepared by: Travis Germundson

Reviewed by: _____ Committee(s)

Presented by: Gerald Van Amburg/Travis Germundson

☐ Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: ☐ Resolution ☐ Order ☐ Map ☒ Other Supporting Information

Fiscal/Policy Impact

☒ None

☐ Amended Policy Requested

☐ New Policy Requested

☐ General Fund Budget

☐ Capital Budget

☐ Outdoor Heritage Fund Budget

☐ Clean Water Fund Budget

☐ Other: _____

ACTION REQUESTED

None

SUMMARY (*Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation*)

Dispute Resolution Committee Report. The report provides a monthly update on the number of appeals filed with the BWSR.

Dispute Resolution Report
October 12, 2012
By: Travis Germundson

There are presently 9 appeals pending. All of the appeals involve WCA except File 10-10. There have been no new appeals filed since the last report given at the September 26th Board Meeting.

Format note: New appeals that have been filed since last report to the Board.
~~Appeals that have been decided since last report to the Board.~~

File 12-13 (8-3-12) This is an appeal of a wetland banking credit deposit request in Stearns County. The appeal regards the approval of a wetland banking plan request to deposit credits. The Stearns County Wetland Appeal Panel reversed an earlier staff decision to deny the application. At issue are the eligibility requirements for wetland bank credits. The appeal has been remanded for the LGU to develop an adequate record.

File 12-12 (7-16-12) This is an appeal of an exemption determination in Renville County. The appeal regards the denial of an agricultural drainage exemption associated with a 1.5 acre wetland. At issue is the wetland type determination. A previous appeal (File 12-5) was remanded for further technical evaluation and administrative proceedings, and now the current approval is being appealed. The appeal has been granted and a Pre-Hearing Conference has been scheduled for October 22nd.

File 11-1 (1-20-11) This is an appeal of a restoration order in Hennepin County. The appeal regards the filling of approximately 1.77 acres of wetland and 0.69 acres of excavation. The appeal has been placed in abeyance and the restoration order stayed until there is a final decision on an after-the-fact wetland application and confirmation of required mitigation.

File 10-10 (6-10-10) This is an appeal filed under Minn. Stat. 103D.535 regarding an order of the managers of the Wild Rice Watershed District not to go forward with the Upper Becker Dam Enhancement Project as proposed. Appeals filed under 103D.535 require that the Board follow the Administrative Procedures Act. The Act requires that the hearing be conducted by an Administrative Laws Judge through the Office of Administrative Hearings. A mediated settlement agreement was reached with the condition that if the watershed district fails to carry out Option D the appeal shall go forward. The appeal has been placed in abeyance.

File 10-7 (2-19-10) This is an appeal of a restoration order in Stearns County. The appeal regards draining and filling impacts to approximately 18.44 acres of Type2/3 wetland and 3.06 acres of Type 2 wetland. The appeal has been placed in abeyance and the restoration order stayed for submittal of "as built" or project information pertaining to a public drainage system. The landowner has committed to restoring the site and the TEP plans to conduct a site visit this fall to verify that restoration has occurred.

~~File 10-3 (2-1-10) This is an appeal of a restoration order in Stearns County. The appeal regards the placement of agricultural drain tile and the straightening and rerouting of a county ditch that resulted in over 12 acres of wetland impacts. The North Fork Crow River Watershed District recently constructed two rock riprap grade control structures within the ditch and the landowner has disabled and removed some of the tile. Stearns County is looking into if applicable exemption standards. The appellant has granted BWSR additional time to make a decision on the appeal. The appeal has been dismissed. Certificate of Satisfactory Restoration has been issued.~~

~~File 09-13 (8-20-09) This is an appeal of an exemption decision in Otter Tail County. The appeal regards the denial of an exemption request for agricultural/drainage activities. A previous denial of the same exemption decision had been appealed (File 09-6). The appeal was remanded for further technical evaluation and a hearing, and now the current denial has been appealed. The appeal has been granted. A pre-hearing conference convened on November 12, 2009. At which time parties agreed to hold off scheduling written briefs until the petition before NRCS is concluded. The appeal has been placed in abeyance by mutual agreement until there is a final decision by the Department of Agriculture National Appeals Division. A settlement agreement was reached with NRCS. Continuance of the pre-hearing conference reconvened on July 18, 2011. Just received notice that a settlement agreement has been signed by the parties, however, I do not have a fully executed copy. Settlement Agreement.~~

~~File 09-10 (7-9-09) This is an appeal of a banking plan application in Aitkin County. The appeal regards the LGU's denial of a banking plan application to restore 427.5 acres of wetlands through the use of exceptional natural resource value. The appeal has been accepted and pre-hearing conferences convened on October 13 and 30, and December 14, 2009. Settlement discussions are on hold while the appellant addresses permitting issues with the Corps of Engineers. The appeal has been placed in abeyance by mutual agreement on determining the viability of a new wetland banking plan application.~~

~~File 08-9. (03/06/08) This is an appeal of a replacement order in Pine County. The appeal regards impacts to approximately 11.26 acres of wetland. The replacement order has been stayed and the appeal has been placed in abeyance pending disposition with the U.S. Dept of Justice.~~

~~File 06-23. (05/19/06) This is an appeal of a replacement plan decision in Kanabec County. The LGU denied the wetland replacement plan application. A previous denial of the same replacement plan application had been appealed, the appeal was remanded for a hearing, and now the current denial has been appealed. The appeal has been placed in abeyance pending the outcome of a lawsuit between the landowner and the county. The lawsuit concerns the county's possible noncompliance with the 60-day rule. The county prevailed in district court; however the decision was appealed to the Court of Appeals where the county again prevailed. An appeal to the Minnesota Supreme Court was denied review.~~

File 05-1. (01/13/05) This is an appeal of a replacement plan decision by the Rice Creek Watershed District. The District previously made a decision that was appealed which resulted in a remand for an expanded TEP. Now there is an appeal of the decision made under remand since the decision differed from the TEP report. At issue are wetland delineation and the Comprehensive Wetland Protection and Management Plan that BWSR approved. After a hearing before the DRC, the board remanded the matter for new wetland delineation and for submission on an updated, complete replacement plan application. On 12-9-09 the District made a new wetland delineation decision. The applicant has not yet submitted an updated replacement plan application.

Summary Table

Type of Decision	Total for Calendar Year 2011	Total for Calendar Year 2012
Order in favor of appellant	2	1
Order not in favor of appellant	2	4
Order Modified	2	
Order Remanded		2
Order Place Appeal in Abeyance	4	1
Negotiated Settlement	1	
Withdrawn/Dismissed	2	4

COMMITTEE RECOMMENDATIONS

Metro Water Planning Committee

1. Comfort Lake Forest Lake Watershed District Watershed Management Plan Amendment – Melissa Lewis – ***DECISION ITEM***
2. Elm Creek WMO Plan Amendment – Brad Wozney – ***DECISION ITEM***
3. Chisago County Priority Concerns Scoping Document (PCSD) – Mary Kells – ***DECISION ITEM***



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Comfort Lake Forest Lake WD Plan Amendment

Meeting Date: October 24, 2012

Agenda Category: ☒ Committee Recommendation ☐ New Business ☐ Old Business

Item Type: ☒ Decision ☐ Discussion ☐ Information

Section/Region: Metro

Contact: Jim Haertel

Prepared by: Melissa Lewis

Reviewed by: Metro Water Planning Committee(s)

Presented by: Melissa Lewis

☐ Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: ☐ Resolution ☒ Order ☒ Map ☒ Other Supporting Information

Fiscal/Policy Impact

☒ None

☐ Amended Policy Requested

☐ New Policy Requested

☐ General Fund Budget

☐ Capital Budget

☐ Outdoor Heritage Fund Budget

☐ Clean Water Fund Budget

☐ Other: _____

ACTION REQUESTED

Approval of Amendment to the Comfort Lake Forest Lake Watershed District Watershed Management Plan

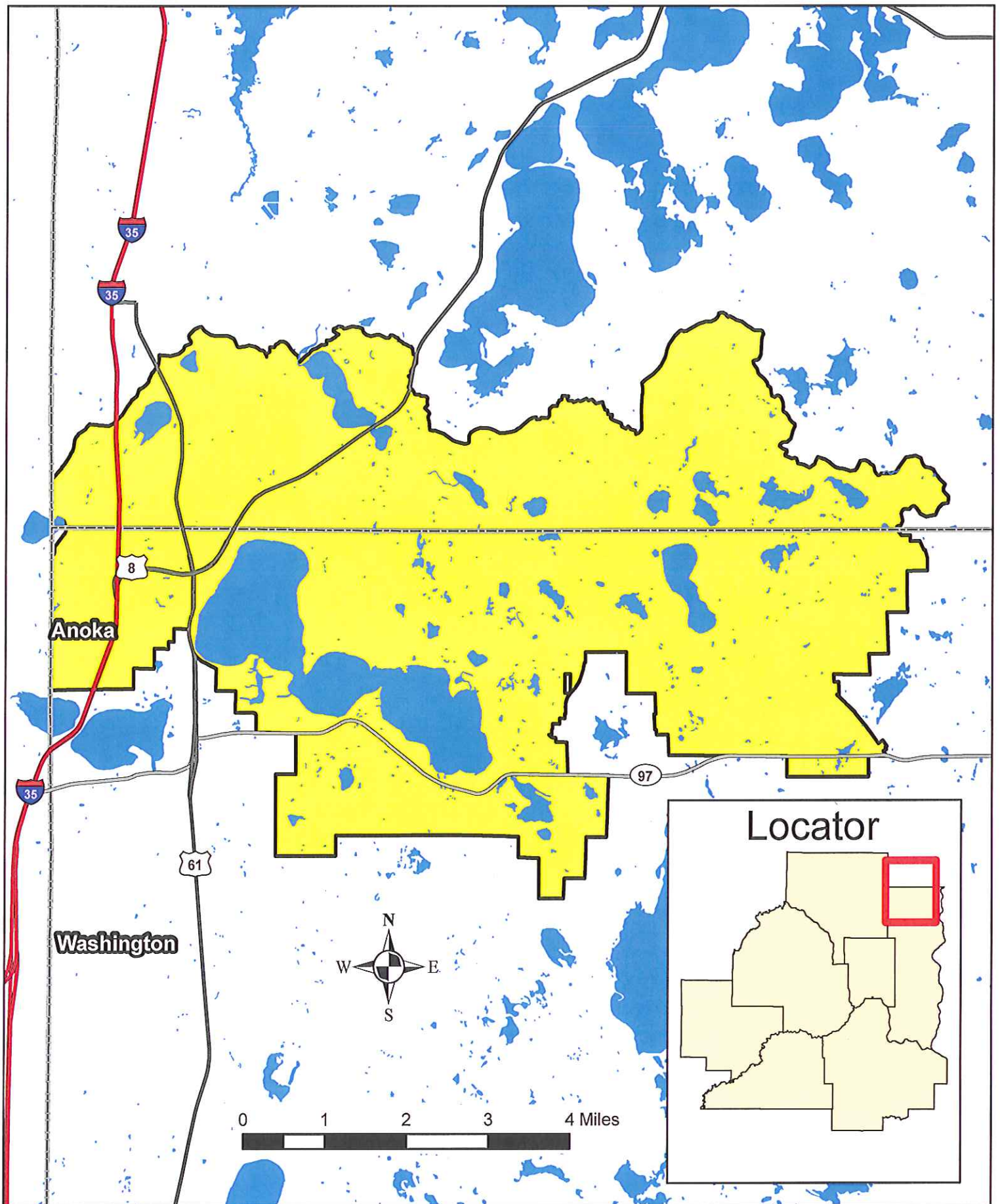
SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

The Comfort Lake-Forest Lake Watershed District (District) was established in 1999 under Minnesota Statutes Chapter 103D and achieved statutory designation under Minnesota Statutes Chapter 103B during the 2008 legislative session. The District encompasses approximately 47 square miles in the northeast portion of the Metropolitan Area, approximately forty percent in Chisago County and sixty percent in Washington County. Portions of the Cities of Forest Lake, Scandia, and Wyoming, and the Towns of Chisago Lakes and Wyoming, are included in the District. The watershed outlets to the northwest to the Sunrise River, which flows northeast through Chisago County before discharging to the St. Croix River.

The Amendment incorporates by reference the final Engineer's Report for the Sunrise River Water Quality & Flowage Project, which was initiated by petition from Chisago County in 2010. By incorporating the Engineer's Report the amendment recognizes the project is a water resource-based program encompassing a slate of capital project and program activities, provides more detailed descriptions of each component including refined estimated construction costs, provides for the project to be implemented over a period of time, and commits the district to a public process prior to ordering and implementing individual project components.

The Metro Water Planning Committee met on October 1, 2012. After review of the information, the Committee unanimously voted to recommend approval of the Amendment per the attached draft Order.

Comfort Lake-Forest Lake Watershed District



Minnesota Board of Water and Soil Resources
520 Lafayette Road North
St. Paul, Minnesota 55155

In the Matter of the review of the Amendment
to the Watershed Management Plan for the
Comfort Lake Forest Lake Watershed District,
pursuant to Minnesota Statutes Section
103B.231, Subdivision 11.

**ORDER
APPROVING
AMENDMENT TO
WATERSHED
MANAGEMENT PLAN**

Whereas, the Board of Managers of the Comfort Lake Forest Lake Watershed District (District) submitted an Amendment to the Watershed Management Plan (Plan) dated April 26, 2012, to the Minnesota Board of Water and Soil Resources (Board) pursuant to Minnesota Statutes Section 103B.231, Subd. 11, and;

Whereas, the Board has completed its review of the Amendment;

Now Therefore, the Board hereby makes the following Findings of Fact, Conclusions and Order:

FINDINGS OF FACT

1. **Watershed District Establishment.** The Comfort Lake-Forest Lake Watershed District (District) was established in 1999 under Minnesota Statutes Chapter 103D and achieved statutory designation under Minnesota Statutes Chapter 103B during the 2008 legislative session.
2. **Authority to Plan.** The Metropolitan Surface Water Management Act requires the preparation of a watershed management plan for the subject watershed area which meets the requirements of Minnesota Statutes Sections 103B.201 to 103B.251. The current District watershed management plan was approved by Board Order on September 28, 2011. The watershed management plan may be amended according to Minnesota Statutes Section 103B.231, Subd. 11.
3. **Nature of the Watershed.** The District encompasses approximately 47 square miles in the northeast portion of the Metropolitan Area, approximately forty percent in Chisago County and sixty percent in Washington County; and bound by the Sunrise River Watershed Management Organization to the west, the Rice Creek Watershed District to the south and west, the Carnelian-Marine-St. Croix Watershed District to the south and east, and no watershed management organizations to the north in Chisago County. Portions of the Cities of Forest

Lake, Scandia, and Wyoming, and the Towns of Chisago Lakes and Wyoming, are included in the District. The watershed outlets to the northwest to the Sunrise River, which flows northeast through Chisago County before discharging to the St. Croix River.

4. **Amendment Development and Review.** The District circulated a copy of the draft Amendment to the Board, other state agencies, Metropolitan Council, and local governments for their review pursuant to Minnesota Statutes Section 103B.231, Subd. 7 on May 14, 2012. A summary of comments received and the District's response was received on July 17, 2012. A public hearing was held on August 23, 2012. No comments were received. The final draft of the Amendment was received by the Board on August 31, 2012.
5. **Local Review.** The District distributed copies of the draft Plan to local units of government for their review pursuant to Minnesota Statutes Section 103B.231, Subd. 7. No comments were received.
6. **Metropolitan Council Review.** The Council indicated the amendment was a comprehensive approach to improving the area's drainage system and did not request changes.
7. **Department of Agriculture Review.** The MDA did not comment on the Amendment.
8. **Department of Health Review.** The MDH did not comment on the Amendment.
9. **Department of Natural Resources Review.** The DNR did not comment on the Amendment.
10. **Pollution Control Agency Review.** The PCA did not comment on the Amendment.
11. **Department of Transportation Review.** The DOT did not comment on the Amendment.
12. **Board Review.** Board staff found the amendment to be consistent with Minnesota Statute and Rule and did not request changes.
13. **Amendment Summary.** The Amendment incorporates by reference the final Engineer's Report for the Sunrise River Water Quality & Flowage Project, which was initiated by petition from Chisago County in 2010.
14. **Metro Water Planning Committee Meeting.** On October 1, 2012, the Board's Metro Water Planning Committee and staff met in St. Paul to review and discuss the Amendment. Those in attendance from the Board's Committee were Rebecca Flood, Faye Sleeper, Joe Collins, and Robert Burandt as chair. Board staff in attendance were Metro Region Supervisor Jim Haertel and Board Conservationist Melissa Lewis. Board staff recommended approval of the Amendment. After discussion, the Committee unanimously voted to recommend approval of the Amendment to the full Board.

CONCLUSIONS

1. All relevant substantive and procedural requirements of law and rule have been fulfilled.
2. The Board has proper jurisdiction in the matter of approving an Amendment to the Watershed Management Plan for the Comfort Lake Forest Lake Watershed District pursuant to Minnesota Statutes Section 103B.231, Subd. 11.
3. The attached Amendment is in conformance with the requirements of Minnesota Statutes Sections 103B.201 to 103B.251.

ORDER

The Board hereby approves the attached Amendment, dated April 26, 2012, to the Comfort Lake Forest Lake Watershed District Watershed Management Plan.

Dated at St. Paul, Minnesota this 24th day of October, 2012.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

BY: Brian Napstad, Chair

Proposed Plan Amendment (April 26, 2012)

(Insert on page 53 of CLFLWD Watershed Management Plan – October 2011)

I. (CIP) Sunrise River Water Quality and Flowage Project, Phased Implementation: Project descriptions 5229A through 5229H identify specific actions that the District may take to implement this petitioned project. The need for the project, as defined in the original petition of the Chisago County Board of Commissioners (Appendix B), is to improve water quality, seasonal flooding and other water quantity conditions within the subwatershed that drains to the Sunrise River and Comfort Lake. The project therefore is not a single action but rather a water resource-based program encompassing a slate of capital projects and program activities that the Board, on the basis of staff and engineer analysis, finds will cost-effectively advance the project goals. In addition, for reasons related to the District's budget and spending capacity, the timing of landowner interest and the benefit of basing actions on results of preceding work (adaptive management approach), projects will be implemented over a period of time.

Project description 5229I establishes a foundation for programs and capital projects that the Board may identify over the planning period as appropriate for implementation, in addition to or in place of those identified in projects 5229A through 5229H. Because the District intends to take advantage of opportunities as they arise, without delay or undue administrative process, a procedure is described here to identify and approve such actions without the need for further plan amendment procedures.

The foundation of project selection will be the report of the District engineer prepared as a part of the petitioned process. This report is a comprehensive review of hydraulic, hydrologic and ecologic data for the subwatershed and contains feasibility analyses for actions including capital projects, stormwater system retrofits and rough fish management. Pursuant to statutory process (Minnesota Statutes §103D.745), the engineer's report will be finalized and accepted by the Board only after review by the Minnesota Board of Water and Soil Resources, the Department of Natural Resources, Chisago and Washington Counties and the cities and townships within the watershed, as well as interested members of the public. The District will undertake an implementation action only after a Board finding that it is consistent with the engineer's report. The final engineer's report is incorporated into and, by reference, made a part of this Watershed Management Plan.

Implementation actions that the Board identifies as consistent with the engineer's report would be subject to several further process steps.

- First, spending for project implementation will be set annually through the District's workplan and budgeting process. This is a public process that occurs in August and early September each year. It includes a public notice and hearing required by statute at which any interested person may address the Board of Managers on the proposed budget.

- Second, all proposed project activities will be presented to the District's citizens' advisory committee under Minnesota Statutes §103D.331. The Board of Managers will carefully consider all committee review and input.
- Third, all proposed actions constituting capital projects will be approved for funding and implementation only after following the procedure of Minnesota Statutes §103B.251. This section requires that a public hearing be held to consider the merits of the proposal, with prior published notice as well as written notice, with a copy of or the availability of project plans, to Chisago and Washington Counties, cities and townships within the watershed. The Board of Managers will hear and consider all public comments and make funding decisions in open public meeting.

The estimated cost for project implementation, beyond the sum estimated for 5229A through 5229H, is \$2,700,000 over the planning period. District costs to implement project actions will be funded through the *ad valorem* property tax levied annually on property within the watershed. The District also will seek grants and other forms of funding assistance from regional, state and federal sources and will seek voluntary collaboration with public and private parties. In addition, some program actions, such as stormwater system retrofits, may be funded by cost-sharing arrangements with participating local units of government or property owners.

The District does not intend to establish water management districts or stormwater fee systems for localized funding; if that intent changes, the District would propose to amend this program description and a public process to do so would follow. The financial impact of project implementation on local units of government will be very limited, as financial participation or other commitments (such as assuming the responsibility to maintain stormwater facilities) will be voluntary.



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Elm Creek WMO Plan Amendment^L

Meeting Date: October 24, 2012

Agenda Category: ☒ Committee Recommendation ☐ New Business ☐ Old Business

Item Type: ☒ Decision ☐ Discussion ☐ Information

Section/Region: Metro

Contact: Brad Wozney, Board Conservationist

Prepared by: Brad Wozney, Board Conservationist

Reviewed by: Metro Water Planning Committee(s)

Presented by: Brad Wozney

☐ Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: ☐ Resolution ☒ Order ☒ Map ☒ Other Supporting Information

Fiscal/Policy Impact

☒ None

☐ Amended Policy Requested

☐ New Policy Requested

☐ General Fund Budget

☐ Capital Budget

☐ Outdoor Heritage Fund Budget

☐ Clean Water Fund Budget

☐ Other: _____

ACTION REQUESTED

Approval of Amendment to the Elm Creek Watershed Management Organization Watershed Management Plan

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

WMO Background

The Elm Creek WMO is located exclusively in Hennepin County in the west/northwest portion of the Minneapolis – St. Paul seven county metropolitan area. It is bound by the Mississippi and Crow Rivers to the north, on the east by the West Mississippi and Shingle Creek Watershed Management Organizations, on the south by Bassett Creek WMO and Minnehaha Creek Watershed District, and on the west by the Pioneer – Sarah Creek WMO. The Elm Creek watershed covers approximately 130.5 square miles. There are 21 lakes and four major streams in the Elm Creek watershed. The watershed predominantly drains directly to the Mississippi River with a small portion immediately tributary to the Crow River. The watershed continues to be heavily influenced by agriculture and rural residential development, with some high density housing, commercial, and townhouse developments in the cities of Maple Grove, Plymouth, and Rogers.

The Commission was formed on February 1, 1973, through a Joint Powers Agreement (JPA) with all or part of the following eight communities: Champlin, Corcoran, Dayton, Hassan Township, Maple Grove, Medina, Plymouth, and Rogers. The City of Rogers recently annexed Hassan Township. The Commission adopted their first Watershed Plan in 1983. Their current watershed management plan was approved in October 2004.

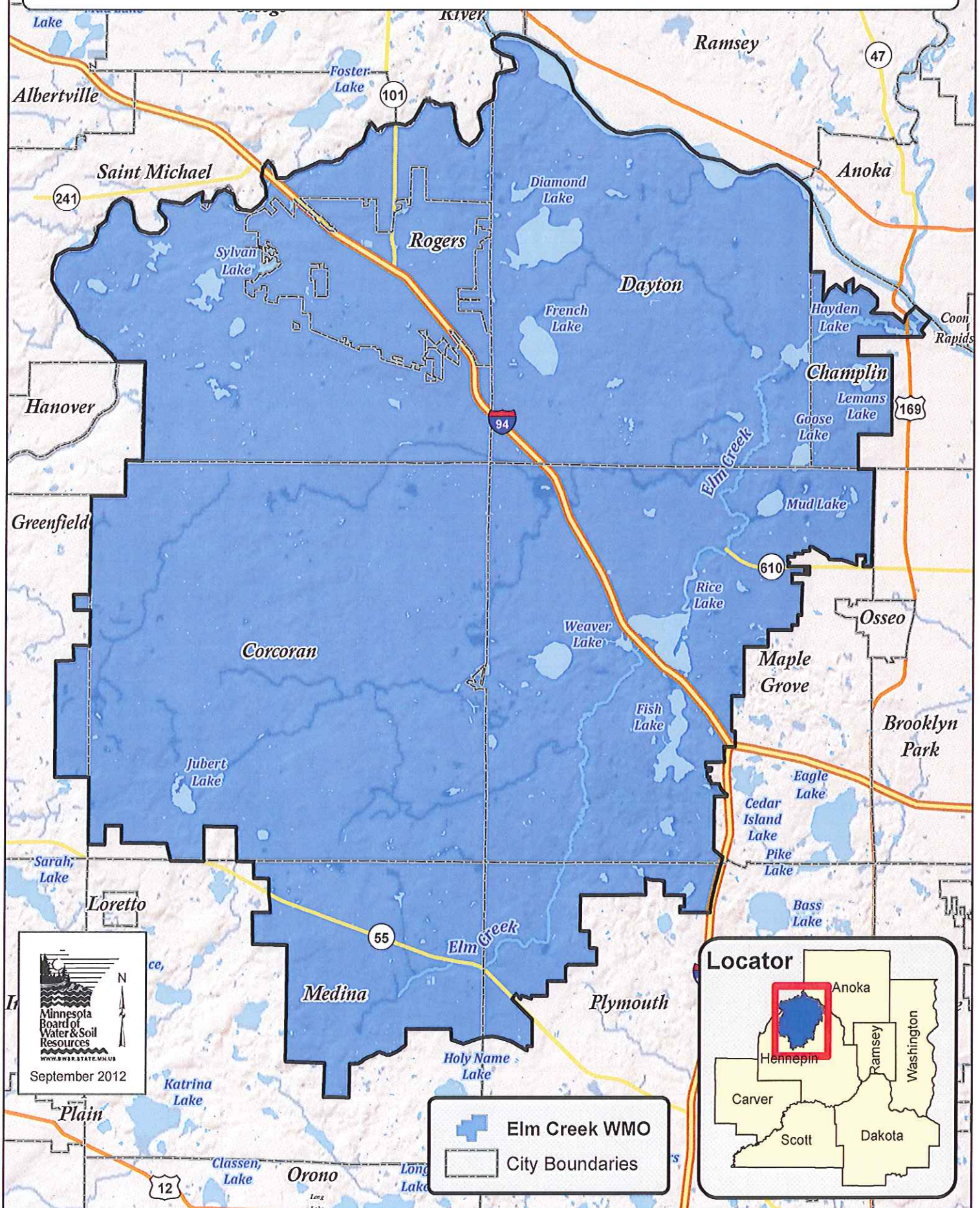
Amendment Summary

The Amendment proposes to revise the implementation program by adding details and re-prioritizing programs, studies, capital improvement projects, and other implementation activities in the Watershed Management Plan. In addition the Amendment clarifies the plan's amendment section by extending the plan expiration to October 2014, which is the maximum timeframe of ten years allowed under statute following the Board's original plan approval. The current plan was scheduled to be originally Board approved in 2003;

however, the Board required the joint powers agreement to be fully executed prior to plan approval and this did not occur until 2004.

The Metro Water Planning Committee met on October 1, 2012. After review of the information, BWSR staff was in favor of and the Committee unanimously voted to recommend approval of the Plan Amendment dated September 20, 2012, to the full Board per the attached draft Order.

Elm Creek Watershed Management Organization



Minnesota Board of Water and Soil Resources
520 Lafayette Road North
Saint Paul, Minnesota 55155

In the Matter of the review of the
Amendment to the Watershed Management
Plan for the Elm Creek Watershed
Management Organization, pursuant to
Minnesota Statutes Section 103B.231,
Subdivision 11.

**ORDER
APPROVING
AMENDMENT TO
WATERSHED
MANAGEMENT PLAN**

Whereas, the Board of Commissioners of the Elm Creek Watershed Management Organization (Commission) submitted a Watershed Management Plan Amendment dated September 2012 (Amendment), to the Minnesota Board of Water and Soil Resources (Board) pursuant to Minnesota Statutes Section 103B.231, Subd. 11, and;

Whereas, the Board has completed its review of the Amendment;

Now Therefore, the Board hereby makes the following Findings of Fact, Conclusions and Order:

FINDINGS OF FACT

1. **WMO Establishment.** The Commission was formed on February 1, 1973, through a Joint Powers Agreement (JPA) with all or part of the following eight communities: Champlin, Corcoran, Dayton, Hassan Township, Maple Grove, Medina, Plymouth, and Rogers. The City of Rogers recently annexed Hassan Township. The Commission adopted their first Watershed Plan in 1983. Their current watershed management plan was approved in October 2004.
2. **Authority to Plan.** The Metropolitan Surface Water Management Act requires the preparation of a watershed management plan for the subject watershed area which meets the requirements of Minnesota Statutes Sections 103B.201 to 103B.251. The watershed management plan may be amended according to Minnesota Statutes Section 103B.231, Subd. 11.
3. **Nature of the Watershed.** The Elm Creek WMO is located exclusively in Hennepin County in the west/northwest portion of the Minneapolis – St. Paul seven county metropolitan area. It is bound by the Mississippi and Crow Rivers to the north, on the east by the West Mississippi and Shingle Creek Watershed Management Organizations, on the south by Bassett Creek WMO and Minnehaha Creek Watershed District, and on the west by the Pioneer – Sarah Creek WMO. The Elm Creek watershed covers approximately 130.5 square miles. There are 21 lakes and four major streams in the Elm Creek watershed. The watershed predominantly drains directly to the Mississippi River

with a small portion immediately tributary to the Crow River. The watershed continues to be heavily influenced by agriculture and rural residential development, with some high density housing, commercial, and townhouse developments in the cities of Maple Grove, Plymouth, and Rogers.

4. **Amendment Development and Review.** The draft Amendment was submitted to the Board, other state agencies, and local governments for the required 60-day review on June 14, 2012. The Commission received a comment letter from the Metropolitan Council and the Board. The Commission held a public hearing on September 12, 2012 and no suggested changes were offered. The final draft Amendment was submitted to the Board and plan review agencies on September 20, 2012, for final review and approval.
5. **Metropolitan Council Review.** Met Council commended the Commission for proactive management of the water resources stating the Amendment is consistent with the Council's *Water Resources Management Policy Plan*.
6. **Department of Agriculture Review.** The MDA did not comment on the Amendment.
7. **Department of Health Review.** The MDH did not comment on the Amendment.
8. **Department of Natural Resources Review.** The DNR did not comment on the Amendment.
9. **Pollution Control Agency Review.** The PCA did not comment on the Amendment.
10. **Department of Transportation Review.** The DOT did not comment on the Amendment.
11. **Local Review.** The Commission circulated a copy of the draft Amendment to local units of government for their review pursuant to Minnesota Statutes Section 103B.231, Subd. 7, and received no comments.
12. **Amendment Summary.** The Amendment proposes to revise the implementation program by adding details and re-prioritizing programs, studies, capital improvement projects, and other implementation activities in the Watershed Management Plan. In addition the Amendment clarifies the plan's amendment section by extending the plan expiration to October 2014, which is ten years beyond the Board's original approval of the plan.
13. **Board Review.** Board staff requested clarification on specific action items and reminded the Commission that annual activity reports must include a summary of the annual assessment of each member community's local water plan implementation. In addition BWSR staff strongly recommended that funds be set aside as a separate line item to continue to foster relationships and offer technical assistance to agricultural producers

and landowners. All comments were addressed. Board staff commended the Commissions for maintaining a current Plan.

14. **Metro Water Planning Committee Meeting.** The Board's Metro Water Planning Committee met on October 1, 2012, to review and discuss the Amendment. Those in attendance from the Board's Committee were Joe Collins, Rebecca Flood, Faye Sleeper, and Bob Burandt, chair. Board staff in attendance was Metro Region Supervisor Jim Haertel and Board Conservationist Brad Wozney. Board staff recommended approval of the Amendment. After discussion, the Committee unanimously voted to recommend approval of the Amendment to the full Board.

CONCLUSIONS

1. All relevant substantive and procedural requirements of law and rule have been fulfilled.
2. The Board has proper jurisdiction in the matter of approving an Amendment to the Watershed Management Plan for the Elm Creek Watershed Management Organization pursuant to Minnesota Statutes Section 103B.231, Subd. 11.
3. The Elm Creek Watershed Management Organization's Amendment attached to this Order defines the need and purpose of the Plan changes and the methods of financing.
4. The attached Amendment is in conformance with the requirements of Minnesota Statutes Sections 103B.201 to 103B.251.

ORDER

The Board hereby approves the attached Amendment dated September 2012 to the Elm Creek Watershed Management Organization's Watershed Management Plan.

Dated at Saint Paul, Minnesota this 24th day of October 2012.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

BY: Brian Napstad, Chair

SECTION V

V. IMPLEMENTATION PROGRAM / PRIORITIES

Based on the information developed in **Sections II through IV**, the Commission has developed a water resource management program that reflects the needs and concerns of the Commission, its member communities, and the residents. **In order to reasonably and responsibly identify and prioritize capital improvements, the Commission has established Capital Improvement Program Standards and Guidelines.** A prioritized listing of the studies, programs, and capital improvements that have been identified as necessary to respond to the water resource needs within the Commission watershed is outlined on the following tables. The items in these tables were identified through extensive member and public input. This implementation program will be reviewed annually by the Commission.

Capital projects that have been identified for inclusion in the Commission's capital improvement program will be funded in accordance with the Commission's Capital Improvement Program Cost Share Policy. The studies and capital improvements identified in this section of the plan may be entirely or partially completed by the member community, the Commission, or a joint effort between the Commission and a member community. The Commission's schedule for implementing the studies, improvements, and programs is provided on the following tables. The cost identified within the tables reflects the amount of work anticipated to complete these items. ~~However, it is unlikely the Commission will be able to undertake these projects without securing grants or other outside funding within the timeline shown.~~

~~Due to the funding constraints of the Commission, rather than attempting to spread its resources over many projects, the Commission has determined it will primarily focus on a few projects at a time and consider doing other projects as funding becomes available. Therefore, the Commission intends to focus on working to stabilize Elm Creek (CIP-1).~~

In order to secure funding for ~~this projects~~ **and others**, the Commission intends to undertake **one or more of** the following activities ~~to secure funding:~~

SECTION V

- Encourage member communities to provide funds to the Commission for a project, study, or program listed in this Plan by agreeing to make it a high priority project if funding is available.
- Actively work to find matching grants or low interest loans for the project, study, or program. Community money and secured grants/loans would then be used for projects, studies, or programs within the member city(ies) that provided the initial funding.
- Commission may contribute funds towards a project if deemed appropriate and reasonable by the Commission. All funding mechanisms will be in accordance with the provisions of the Joint Powers Agreement.
- Multiple communities can collaborate together to provide funds for a joint project that the Commission will then work towards finding available grants/loans.

~~If other projects, programs, or studies come up, the Commission will evaluate their priority and adjust the implementation accordingly. The projects, programs, and studies listed within the Commission's Plan in Tables V-1B, V-2, and V-3 that are identified to be partially or completely the responsibility of the local community must be included in the local Stormwater Management Plan.~~

TABLE V-4A-V-1 CURRENT CAPITAL IMPROVEMENT PROJECTS											
No.	Priority ¹	Project Description	Total Project Cost Estimate ²⁻³	Estimated Cost to be Funded by Commission ²⁻³	Potential Funding Sources ³	Timeline	2011	2012	2013	2014	Comments
CIP-1	High	Undertake bank stabilization and erosion control project within Elm Creek based on study.	\$250,000 to \$2,000,000—	\$125,000 to \$2,000,000—	Gentle, Three Rivers Park District, local communities, General Fund, ad valorem tax—						Commission has determined this item to be highest priority and thus its implementation focus in the foreseeable future—individual projects are identified below.
CIP-1	High	Construct rate control/water quality pond to help reduce runoff into Elm Creek from Hamel Road/Tower Drive as part of road improvement project. Pond will reduce TP 12.19#/yr and TSS 3.88 tons/yr.	\$275,000	\$68,750	Medina					\$68,750	
CIP-2	High	Undertake 1200-ft bank stabilization and erosion control project within Elm Creek Reach D. Increase channel area, lower hydraulic shear stress. Plant native vegetation to stabilize bank and buffer stream from adjacent turf management practices. Relocate or lower underground utilities to prevent channel obstruction.	\$180,000	\$45,000	Plymouth, Commission						Project identified in 2007 Channel Study, to be funded in 2015 and beyond
CIP-3	High	Undertake 600-ft bank stabilization and erosion control project within Elm Creek Reach K (2007 Channel Study). Increase channel area and lower hydraulic shear stress. Increase x-sectional area and meander width, plant disturbed areas with native floodplain forest vegetation to prevent erosion and increase habitat value.	\$90,000	\$22,500	Maple Grove, Three Rivers Park District (TRPD), Commission						Project identified in 2007 Channel Study, to be funded in 2015 and beyond
CIP-4	High	Develop channel protection volume storage, flood storage and associated water quality improvements within wetland complex (DNRP#27043700) at Maple Grove/Corcoran boundary by providing extended detention within the storage basin.	\$75,000	\$18,750	Commission, Corcoran, Maple Grove						Project identified in 2007 Channel Study, to be funded in 2015 and beyond
CIP-5	High	Undertake 1000-ft bank stabilization and erosion control project within Rush Creek Reach M (2007 Channel Study). Widen stream along existing alignment, plant native vegetation to prevent erosion.	\$150,000	\$37,500	Maple Grove, Commission						Project identified in 2007 Channel Study, to be funded in 2015 and beyond
CIP-6	High	Undertake 1100-ft bank stabilization and erosion control project within Elm Creek Reach O (2007 Channel Study). Construct new channel alignment within floodplain, improve habitat in stream corridor.	\$165,000	\$41,250	TRPD, Commission						Project identified in 2007 Channel Study, to be funded in 2015 and beyond
CIP-7	High	Undertake 2000-ft bank stabilization and erosion control project within Elm Creek Reach R (2007 Channel Study). Remove fallen trees to increase channel capacity and reduce bank scour. Reduce channel bank side slopes at existing toe locations, stabilize with riprap and native floodplain forest vegetation to prevent erosion and increase habitat value.	\$300,000	\$75,000	TRPD						Project identified in 2007 Channel Study, to be funded in 2015 and beyond
CIP-8	High	Undertake bank stabilization/erosion control project with a boulder toe, native plantings within Elm Creek Reach X from 0.25 miles upstream of Cartway Road. Riparian restoration of 2000 feet through Jo Nunn Park. Reduce TP 73#/yr. TSS 86tons/yr	\$300,000	\$75,000	Champlin, Commission				\$75,000		
CIP-9	High	Creek Channelization and Stream Restoration - 3,000 feet from 0.5 mile upstream of Cartway Road to Hayden Lake including bank stabilization and channelization, riprap to protect toe of stream bank and native vegetation.	\$450,000	\$112,500	Champlin, Commission						Possible project to be funded in 2015 and beyond
CIP-10	High	Reconstruct Mill Pond Dam including construction of bridge over spillway. Total project cost is \$3,400,000. This phase would restore stream edge at dam outfall by stabilizing stream bank from toe to point 5-3 feet above normal flow. Repair plunge pool and improve spillway. Revegetate slopes above riprap section.	\$250,000	\$62,500	Champlin, Commission, West Miss WMO				\$62,500		
CIP-11	High	Stone's Throw Wetland Restoration. Acquire easements and restore 135 acre wetland adjacent to Rush Creek.	\$450,000	\$112,500	TRPD, Rogers, Corcoran, Commission						Projected funding 2015 and beyond
CIP-12	High	Bass Lake Road South. Retrofit street stormsewers with hydrodynamic separators and SAFI baffles in existing storm sewer circuits where construction of ponds is not feasible, reducing TP loading (50-60%) and TSS loading (75-90%) to Edward Lake and Elm Creek.	\$250,000	\$62,500	Maple Grove, Commission					\$62,500	
CIP-13	High	Cobblestone Hills. Retrofit street stormsewers with hydrodynamic separators and SAFI baffles in existing storm sewer circuits where construction of ponds is not feasible, reducing TP loading (50-60%) and TSS loading (75-90%) to Weaver Lake and Elm Creek.	\$100,000	\$25,000	Maple Grove, Commission					\$25,000	

TABLE V-1A V-1

CURRENT CAPITAL IMPROVEMENT PROJECTS

No.	Priority ¹	Project Description	Total Project Cost Estimate ^{2,3}	Estimated Cost to be Funded by Commission ^{2,3}	Potential Funding Sources ³	Timeline	2011	2012	2013	2014	Comments
CIP-14	High	Stabilize and restore approx. 11,000 feet of Rush Creek east of I-94 and west of Fernbrook Lane, significantly reducing potential for bank erosion and sediment transport to Elm Creek. Restore native vegetation to provide habitat for wildlife, creating natural area for city demonstration.	\$1,650,000	\$250,000	Maple Grove, Commission						Projected funding 2016
CIP-15	High	Restore hydrology and plant community of 55-acre wetland located between 101st-105th Streets, west of Ranchview Lane. Restore function of wetland including flood and stormwater attenuation, vegetative diversity and integrity, wildlife, amphibian and invertebrate habitat, aesthetic, recreation and educational values and groundwater recharge.	\$200,000	\$50,000	Maple Grove, Commission				\$50,000		
CIP-16	High	Stabilize and restore approx. 4,500 feet of Rush Creek north of 101 Avenue, significantly reducing potential for bank erosion and sediment transport to Elm Creek. Restore native vegetation to provide habitat for wildlife.	\$875,000	\$168,750	Maple Grove, Commission				\$84,375	\$84,375	
CIP-17	High	County Road 30. Retrofit street stormsewers with hydrodynamic separators and SAFI baffles in existing storm sewer circuits where construction of ponds is not feasible, reducing TP loading by 50-65%, TSS loading by 75-90% to Rice Lake and Elm Creek.	\$200,000	\$50,000	Maple Grove, Commission						Projected funding 2015
CIP-18	High	Stonebridge. Retrofit street stormsewers with hydrodynamic separators and SAFI baffles in existing storm sewer circuits where construction of ponds is not feasible, reducing TP loading by 50-60%, TSS loading by 75-90% to Rice Lake and Elm Creek.	\$200,000	\$50,000	Maple Grove, Commission						Projected funding 2016
CIP-19	High	Rice Lake Water Quality Improvements. Implement plans to restore the native aquatic plant community, eliminate rough fish and re-establish a healthy fish population that is beneficial to improved water quality.	\$120,000	\$30,000	Maple Grove, Commission					\$30,000	
CIP-20	High	Fox Creek Streambank Stabilization - Segment 1 - Edison Court. Provide stabilization and protection along 200 feet of streambank, enhance/expand adjacent wetland, reduce sediment transport and provide habitat enhancement and wooded upland protection. Sediment load reduction = 6.4-12.8 tons/year; TP reduction = 6.4-12.8#/year	\$48,750	\$12,188	Rogers, Commission				\$12,188		
CIP-21	High	Fox Creek Streambank Stabilization - Segment 2 - Creekview Drive. Provide stabilization and protection along 1000 feet of streambank, reducing sediment transport and providing habitat enhancement and wooded upland protection. Sediment load reduction = 21-42 tons/year; TP reduction = 21-42#/year	\$150,000	\$37,500	Rogers, Commission				\$37,500		
CIP-22	High	Fox Creek Streambank Stabilization - Segment 3 - I-94/Hyacinth Drive. Provide stabilization and protection along 3000 feet of streambank, reducing sediment transport and providing habitat enhancement and wooded upland protection. Sediment load reduction = 48-98 tons/year; TP reduction = 48-98#/year	\$90,000	\$90,000	Rogers, Commission					\$90,000	
CIP-23	High	South Pointe Streambank Stabilization. Provide stabilization and protection along 600 feet of streambank tributary to Fox Creek at its headwaters, reducing sediment transport and providing habitat enhancement and wooded upland protection. Sediment load reduction = 12-24 tons/year; TP reduction = 12-24#/year	\$90,000	\$22,500	Rogers, Commission						Projected funding 2016
TOTAL			\$250,000 to-\$2,000,000-\$5,728,750	\$125,000 to-\$2,000,000-\$1,519,688			0	0	346,563	335,625	

1. The Commission has determined that the highest priority is to focus on the stabilization of Elm Creek. While the Commission agrees that the other items shown on these tables are important, the Commission has limited resources and has determined that focusing on one area at a time will be more effective. The Commission will re-evaluate its priorities on an annual basis.

2. Estimated funding level is included here for planning purposes only. Actual costs may vary greatly from estimates provided. This amount is subject to change based on future adjustments to the Joint Powers Agreement, funding and grant availability, or changes in funding levels defined by the annual budget defined by the Commission.

3. Cost share from the member communities will be based on the Joint Powers Agreement. Subsequent feasibility studies that define the benefit of the project may change the fee/cost share.

TABLE V-1B FUTURE CAPITAL IMPROVEMENT PROJECTS							
No.	Priority	Project Description	Total Project Cost Estimate ^{1,2}	Estimated Cost to be Funded by Commission ^{1,2}	Potential Funding Sources	Timeline	Comments
CIP-2	High	Complete water quality improvements based on study for Fish Lake (Maple Grove).	\$20,000 to \$50,000	\$0	Local community	Project to be undertaken at future date to be determined based on funding availability	Included in SMS-1, funded in 2015 and beyond
CIP-3	Medium	Undertake bank stabilization and erosion control project within Rush Creek based on study.	\$250,000 to \$2,000,000	\$125,000 to \$2,000,000	Grants, local communities, general fund, ad valorem tax	Project to be undertaken at future date to be determined based on funding availability	Included in SMS-1, funded in 2015 and beyond
CIP-4	Medium	Undertake bank stabilization and erosion control project within North Fork Rush Creek	\$250,000 to \$2,000,000	\$125,000 to \$2,000,000	Grants, local communities, general fund, ad valorem tax	Project to be undertaken at future date to be determined based on funding availability	Included in SMS-1, funded in 2015 and beyond
CIP-5	Medium	Undertake bank stabilization and erosion control project within Diamond Creek	\$200,000 to \$1,500,000	\$100,000 to \$1,500,000	Grants, Three Rivers Park District, local communities, General Fund, ad valorem tax	Project to be undertaken at future date to be determined based on funding availability	Included in SMS-1, funded in 2015 and beyond
CIP-6	Low	Complete water quality improvement project for Elm Creek based on study.	\$50,000 to \$2,000,000	\$25,000 to \$2,000,000	Grants, Three Rivers Park District, local communities, General Fund	Project to be undertaken at future date to be determined based on funding availability	Included in SMS-1, funded in 2015 and beyond
CIP-7	Low	Complete water quality improvement project for Mill Pond based on study (Champlin)	\$300,000 to \$1,300,000	\$50,000 to \$650,000	Local community, grant, general fund	Project to be undertaken at future date to be determined based on funding availability	Included in SMS-1, funded in 2015 and beyond
CIP-8	Low	Complete water quality improvements based on study for Rice Lake, Mud Lake, and Weaver Lake (Maple Grove).	\$30,000 to \$200,000	\$0	Local community	Project to be undertaken at future date to be determined based on funding availability	Included in SMS-1, funded in 2015 and beyond
CIP-9	Low	Complete water quality improvements based on study for Mud Lake (Plymouth)	\$20,000 to \$50,000	\$0	Local community	Project to be undertaken at future date to be determined based on funding availability	Included in SMS-1, funded in 2015 and beyond
CIP-10	Low	Complete water quality improvements based on study for Hayden Lake and Diamond Lake (Dufort)	\$40,000 to \$100,000	\$0	Local community	Project to be undertaken at future date to be determined based on funding availability	Included in SMS-1, funded in 2015 and beyond
CIP-11	Low	Complete water quality improvements based on study for Lemare Lake (Champlin)	\$20,000 to \$50,000	\$0	Local community	Project to be undertaken at future date to be determined based on funding availability	Included in SMS-1, funded in 2015 and beyond
CIP-12	Low	Complete water quality improvements based on study for Sylvan Lake (Hoscon Twp)	\$20,000 to \$50,000	\$0	Local community	Project to be undertaken at future date to be determined based on funding availability	Included in SMS-1, funded in 2015 and beyond
CIP-13	Low	Complete water quality improvement project for Goose Lake	\$30,000 to \$100,000	\$15,000 to \$100,000	Grants, Three Rivers Park District, local communities, General Fund	Project to be undertaken at future date to be determined based on funding availability	Included in SMS-1, funded in 2015 and beyond
CIP-14	Low	Complete water quality improvement project for Crow River based on study	\$30,000 to \$100,000	\$15,000 to \$100,000	Grants, local communities, general fund	Project to be undertaken at future date to be determined based on funding availability	Responsibility of others.
TOTAL			\$1,540,000 to \$14,150,000	\$580,000 to \$10,250,000			

1. Estimated funding level is included here for planning purpose only. Actual costs may vary greatly from estimates provided. This amount is subject to change based on future adjustments to the Joint Powers Agreement, funding and grant availability, or changes in funding levels defined by the annual budget defined by the Commission.

2. Cost share from the member communities will be based on the Joint Powers Agreement. Subsequent feasibility studies that define the benefit of the project may change the fee/cost share.

Note to reviewing agencies: This Table is being removed in its entirety. All items are included in Table V-3, SMS-1, or are the responsibility of others.

TABLE V-2

STORMWATER MANAGEMENT PROGRAMS

No.	Priority ¹	Project Description	Total Cost Estimate ¹⁻²	Estimated Cost to be Funded by Commission ¹⁻²	Funding Sources	Timeline	2011	2012	2013	2014	Comments
SMP-1	High	Undertake plan review for development projects for areas where Commission is local permitting authority	\$10,000 to \$20,000- \$82,000 annually	\$10,000 to \$20,000- \$82,000 annually	General fund	Program is ongoing	80,000	77,000	81,000	84,000	The following programs occur as part of the Commission's ongoing activities and are included as line items in the Commission's Operating Budget.
SMP-2	High	Conduct periodic review and inspection of projects authorized by the permitting authority	\$3,000 to \$8,000-annually	\$3,000 to \$8,000-annually	General fund	Program is ongoing					2012 budget, lines 11-15
SMP-3	High	Undertake enforcement responsibilities when there is no local plan or community is not enforcing policies	\$0-\$20,000-annually	\$0-\$20,000-annually	General fund	Program is ongoing					Included in SMP-1
SMP-4	High	Annually review development plan review process with local communities	\$5,000 to \$10,000-annually	\$5,000 to \$10,000-annually	General fund	Program is ongoing					Included in SMP-5
SMP-5	High	Undertake LGU responsibility for the Wetland Conservation Act for those cities that choose to utilize this service	\$4,000 to \$10,000-annually	\$4,000 to \$10,000-annually	General fund	Program is ongoing	12,750	10,000	10,200	10,200	Included in SMP-1
SMP-6	High	Provide NPDES Phase II assistance for member communities, if requested	\$10,000 to \$80,000-annually	\$0	Local community						Included in SMP-4
SMP-7	High	Continue the water quality monitoring program for lakes and streams	\$20,000 to \$120,000-annually	\$20,000 to \$120,000-annually	Grant: General fund local community	Program is ongoing	39,700	39,758	40,798	41,125	2012 budget, lines 23-35
SMP-8	High	Implement water quantity monitoring program for lakes and streams	\$10,000 to \$50,000-annually	\$10,000 to \$50,000-annually	Grant: General fund-local community	Program is ongoing					Included in SMP-3
SMP-9	High	Develop and implement a public education program in conformance with NPDES Phase II rules	\$5,000 to \$20,000-annually	\$5,000 to \$20,000-annually	General fund, grant, local community	Program is ongoing	12,000	14,000	14,500	15,500	2012 budget, lines 37-49
SMP-10	High	Implement program to ensure stormwater ponds are maintained and adopt a stormwater system maintenance plan (local community)	\$5,000 to \$25,000-annually per community	\$5,000 to \$25,000-annually per community	Local community						Local community responsibility
SMP-11	High	Sweep City-owned paved and section streets once annually and urban section streets twice annually (local community)	\$10,000 to \$30,000-annually per community	\$0	Local community						Local community responsibility
SMP-12	Medium	Review progress and policies relating to Total Maximum Daily Load (TMDLs) as they become available	\$0 to \$10,000-annually	\$0 to \$10,000-annually	General fund, grant, local community						Included in SMS-1, SMS-2, and SMP-5, and SMP-6
SMP-13	Medium	Pursue grant funding to assist public education efforts for local communities	\$0 to \$10,000-annually	\$0	Local community						Included in SMP-4
SMP-14	Medium	Provide conservation practice technical assistance to farmers who request this service	\$0 to \$50,000-annually	\$0 to \$50,000-annually	Grants, HCD, NRCS						Included in SMP-4, SMP-5 and SMS-1
SMP-15	Medium	Identify and maintain an erosion and sedimentation problem area list for future projects by the Commission or local communities	\$500-\$5,000-annually	\$500-\$5,000-annually	General fund, grant, local community						Included in SMS-2 and SMP-5 and SMS-6
SMP-16	Medium	Act as mediator for deadfall removal issues as requested	\$0 to \$10,000-annually	\$0 to \$10,000-annually	General fund-local community						Local community responsibility
SMP-17	Medium	Cooperate with the Minnesota Department of Health to ensure abandoned and unsealed wells are properly sealed (local community)	\$0 to \$10,000-annually per community	\$0	Local community						Local community responsibility
SMP-18	Low	Remove deadfall in creek that is no longer attached to the land (local community)	\$0 to \$50,000-annually per community	\$0	Local community						Local community responsibility
SMP-19	High	Review local stormwater management plans for conformance with Third Generation Elm Creek Watershed Plan	\$0,000 to \$40,000-	\$8,000-\$40,000-	General fund	2005-2006-					Budgeted in 2015 and 2016
SMP-20	High	Assist member cities in developing BMP implementation programs to incentivize residents to install and maintain rain gardens and other best management practices and initiate/enforce relationships with and offer technical assistance to agricultural producers and landowners to reduce phosphorus loading to local streams, lakes.	\$25,000/year	\$3,000/year	Commission education grant				\$3,000	\$3,000	2012 budget, lines 37-49
TOTAL			\$187,000	\$575,000 to \$3,320,000 \$165,000			144,450	140,758	149,498	153,825	

1.-Estimated funding level is included here for planning purposes only. Actual costs may vary greatly from estimates provided. This amount is subject to change based on future adjustments to the Joint Powers Agreement, funding and grant availability, or changes in funding levels defined by the annual budget.

2.-Cost share from the member communities will be based on the Joint Powers Agreement. Subsequent feasibility studies that define the benefit of the project may change the benefit of the project.

TABLE V-3

STORMWATER MANAGEMENT STUDIES

No.	Priority	Project Description	Total Cost Estimate 4-2	Estimated Cost to be Funded by Commission 4-2	Funding Sources	Timeline	2011	2012	2013	2014	Comments
SMS-1	High	Undertake watershed-wide Total Maximum Daily Load (TMDL). Develop water quality and quantity goals for specific water bodies within the watershed to determine adequacy of water quality and quantity protection policies.	\$10,000 to \$40,000— \$450,000	\$10,000 to \$40,000— \$137,000	MPGA Grant, general fund, local community— Three Rivers Park District	Study to be undertaken at future date to be determined based on funding availability— 2010-2014	12,000	25,000	25,000	37,500	2012 budget, lines 65-71, 96
SMS-2	High	Complete Wetland Management Plan including an inventory and functions and value assessments of wetlands as funds become available (with local communities)	\$320,000 to \$800,000	\$0 to \$400,000	Grant, local community	Study to be undertaken at future date to be determined based on funding availability					responsibility of member cities, complete by 2014
SMS-3	High	Develop buffer width standards for wetlands, storm ponds, lakes, streams (local community)	\$10,000 to \$30,000	\$0	Local community						included in SMS-6 SMS-7
SMS-4	High	Develop criteria for prioritization of water bodies for water quality	\$5,000 to \$20,000	\$5,000 to \$20,000	General fund	Study to be undertaken at future date to be determined based on funding availability					included in SMS-6 SMS-7
SMS-5	High	Develop criteria for prioritization of flooding problems	\$5,000 to \$20,000	\$5,000 to \$20,000	General fund	Study to be undertaken at future date to be determined based on funding availability					included in SMS-6 SMS-7
SMS-6	High	Develop and adopt floodplain management ordinance in conformance with this Plan (local community)	\$5,000 to \$50,000	\$0	Local community, grant—						included in SMS-6 SMS-7
SMS-7	High	Develop and adopt a shoreline management ordinance in conformance with this Plan (encouraged—local community)	\$5,000 to \$50,000	\$0	Local community, grant—						included in SMS-6 SMS-7
SMS-8	High	Develop and adopt erosion and sediment control ordinance in conformance with this Plan (local community)	\$5,000 to \$50,000	\$0	Local community, grant—						included in SMS-6 SMS-7
SMS-9	High	Complete a watershed protection zone map as information becomes available from member communities	\$5,000	\$5,000	General fund	To be developed as information becomes available					Complete with general funds
SMS-10	Medium	Review local stormwater management plans for conformance with Elm Creek Watershed Plan	\$0,000 to \$40,000	\$0,000 to \$40,000	General fund	2005-2006					now SMS-5
SMS-11	Medium	Complete hydraulic/hydrologic modeling for watershed and/or locate funding for local communities to complete modeling	\$25,000 to \$150,000	\$0 to \$25,000	General fund, local community	Study to be undertaken at future date to be determined based on funding availability					Completed as part of 2007 Channel Study
SMS-12	Medium	Update study on Elm Creek erosion problems	\$10,000 to \$200,000	\$10,000 to \$200,000	General fund, grants—	Study to be undertaken at future date to be determined based on funding availability					Completed as part of 2007 Channel Study
SMS-13	Medium	Complete study on Rush Creek erosion problems	\$10,000 to \$200,000	\$10,000 to \$200,000	General fund, grants—	Study to be undertaken at future date to be determined based on funding availability					Completed as part of 2007 Channel Study
SMS-14	Medium	Complete study on North Fork Rush Creek erosion problems	\$10,000 to \$200,000	\$10,000 to \$200,000	General fund, grants—	Study to be undertaken at future date to be determined based on funding availability					Completed as part of 2007 Channel Study
SMS-15	Medium	Complete study on Diamond Creek erosion problems	\$10,000 to \$200,000	\$10,000 to \$200,000	General fund, grants—	Study to be undertaken at future date to be determined based on funding availability					Completed as part of 2007 Channel Study
SMS-16	Medium	Complete water quality improvement study for Elm Creek	\$10,000 to \$50,000	\$10,000 to \$50,000	General fund, grants—	Study to be undertaken at future date to be determined based on funding availability					included in SMS-1

TABLE V-3

STORMWATER MANAGEMENT STUDIES

No.	Priority	Project Description	Total Cost Estimate 1-2	Estimated Cost to be Funded by Commission 1-2	Funding Sources	Timeline	2011	2012	2013	2014	Comments
SMS-17	Medium	Complete water quality improvement study for Goose Lake	\$10,000 to \$50,000	\$10,000 to \$50,000	General fund-grant	Study to be undertaken at future date to be determined based on funding availability					Included in SMS-1
SMS-18	Medium	Complete water quality improvement study for Crow River	\$10,000 to \$50,000	\$10,000 to \$50,000	General fund-grant	Study to be undertaken at future date to be determined based on funding availability					Responsibility of others
SMS-19 SMS-2	Medium High	Develop model ordinance and/or standards for manure management and livestock fencing and setback standards.	\$5,000 to \$15,000 \$5,000	\$5,000 to \$15,000 \$5,000	General fund, grants	Study to be undertaken at future date to be determined based on funding availability				5,000	2012 budget, line 53
SMS-20	Medium	Complete water quality study for Rice Lake, Mud Lake, and Weaver Lake (Maple Grove)	\$15,000 to \$80,000	\$0	Local community-grant						Included in SMS-1
SMS-21	Medium	Complete water quality study for Mud Lake (Plymouth)	\$5,000 to \$30,000	\$0	Local community-grant						Included in SMS-1
SMS-22	Medium	Complete water quality study for Hayden Lake and Diamond Lake (Dayton)	\$10,000 to \$60,000	\$0	Local community-grant						Included in SMS-1
SMS-23	Medium	Update study on water quality improvements for Mill Pond and complete study for Lott Lake (Champlin)	\$10,000 to \$60,000	\$0	Local community-grant						Included in SMS-1
SMS-24	Medium	Complete water quality study for Sylvan Lake (Hascam-Twp)	\$5,000 to \$30,000	\$0	Local community-grant						Included in SMS-1
SMS-25 SMS-3	Medium Low	Update flood studies within the watershed	\$50,000 to \$100,000 \$0	\$50,000 to \$100,000 \$0	Local communities, general fund	Study to be undertaken at future date to be determined based on funding availability					Will consider when FEMA update is published.
SMS-26	Low	Assist cities in obtaining 2-foot topography or locate funding to assist local communities in obtaining 2-foot topography for selected areas.	\$40,000 to \$300,000	\$0	Local community						Being completed by State and County - LIDAR.
SMS-27 SMS-4	Low	Complete Utilize the Minnesota Land Cover Classification System (MLCCS) as a planning tool as needed by the local community (local community) to set priority corridor areas in watershed.	\$10,000 to \$100,000	\$0	Local community (need to be determined by local community)						Currently used by Commission Staff. Will be included in SMS-7.
SMS-4 SMS-5	High	Undertake study to determine opportunity to develop channel protection volume storage within wetland complex at Maple Grove/Corcoran boundary.	\$30,000	\$15,000	Commission, Corcoran, Maple Grove				\$7,500	\$7,500	2012 budget, line 80
SMS-5 SMS-6	High	Undertake Elm Creek Channel and Hydraulic Study from Mill Pond to Hayden Lake to improve the hydraulic model of Elm Creek and review stream alignments, stream bank erosion and riparian buffers, prescribe channel design, and recommend design features including structural improvements.	\$22,000	\$11,000	Champlin, Commission						Funded in 2015 or beyond
SMS-6 SMS-7	High	Develop Third Generation Watershed Management Plan	\$70,000	\$70,000	General fund			\$20,000	\$25,000	\$25,000	
TOTAL			\$574,000 to \$2,620,000 \$735,500	\$115,000 to \$1,525,000 \$296,250			12,000	45,000	57,500	75,000	

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2. Cost share from the member communities will be based on the Joint Powers Agreement. Subsequent feasibility studies that define the benefit of the project may change the fee/cost share.

SECTION VII

VII. AMENDMENT PROCEDURES

It is the intention of the Elm Creek Watershed Management Commission to have this Watershed Management Plan reviewed and approved by the Board of Water and Soil Resources (BWSR). Once approved, no significant changes to this plan can be facilitated without the approval of the proposed revisions by the BWSR. Significant or major changes to the Commission's Plan shall be made known to the following parties:

1. The member communities' City Council or Township Board
2. The Metropolitan Council
3. The Elm Creek Watershed Commission Board
4. Hennepin County
5. Hennepin Conservation District
6. Minnesota Board of Water and Soil Resources and all review agencies as set forth in Minnesota Rules, Chapter 8410.
7. A public meeting must be held to explain the amendments and a legal notice of this public meeting must be published twice at least 7 days and 14 days prior to the date of the public meeting.

Following notification of the above parties, there will be 45 days to comment on the proposed revisions. Failure to respond within 45 days constitutes approval.

Minor changes to the plan shall be defined as the following:

- Recodification of the plan
- Revision of a procedure meant to streamline administration of the plan
- Clarification of the intent of a policy
- Inclusion of additional data not requiring interpretation
- Revisions to the standards outlined in **Appendix F**
- Any other action that will not adversely affect the member cities or diminish the Commission's ability to achieve the plan goals or implementation program.

Adjustment to subwatershed boundaries will be considered minor changes, provided that the change will have no significant impact on the rate or quality in which stormwater runoff is discharged from the Commission's boundaries. Minor changes to this plan can be made by the Commission Board with the above-noted public notification process. Any changes not listed here are considered a major revision and requires a ~~full~~ **full** plan update per Minnesota Statute 103B.231. This plan will be in effect through ~~July 2013~~ **October 2014** unless significant changes to the plan are deemed necessary prior to that date.



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Chisago Priority Concerns Scoping Document^L

Meeting Date: October 24, 2012

Agenda Category: ☒ Committee Recommendation ☐ New Business ☐ Old Business
Item Type: ☒ Decision ☐ Discussion ☐ Information
Section/Region: Metro Region
Contact: _____
Prepared by: Mary Kells
Reviewed by: Metro Water Planning Committee(s)
Presented by: Mary Kells

☐ Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: ☐ Resolution ☐ Order ☒ Map ☒ Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| | <input type="checkbox"/> Clean Water Fund Budget |
| <input type="checkbox"/> Other: _____ | |

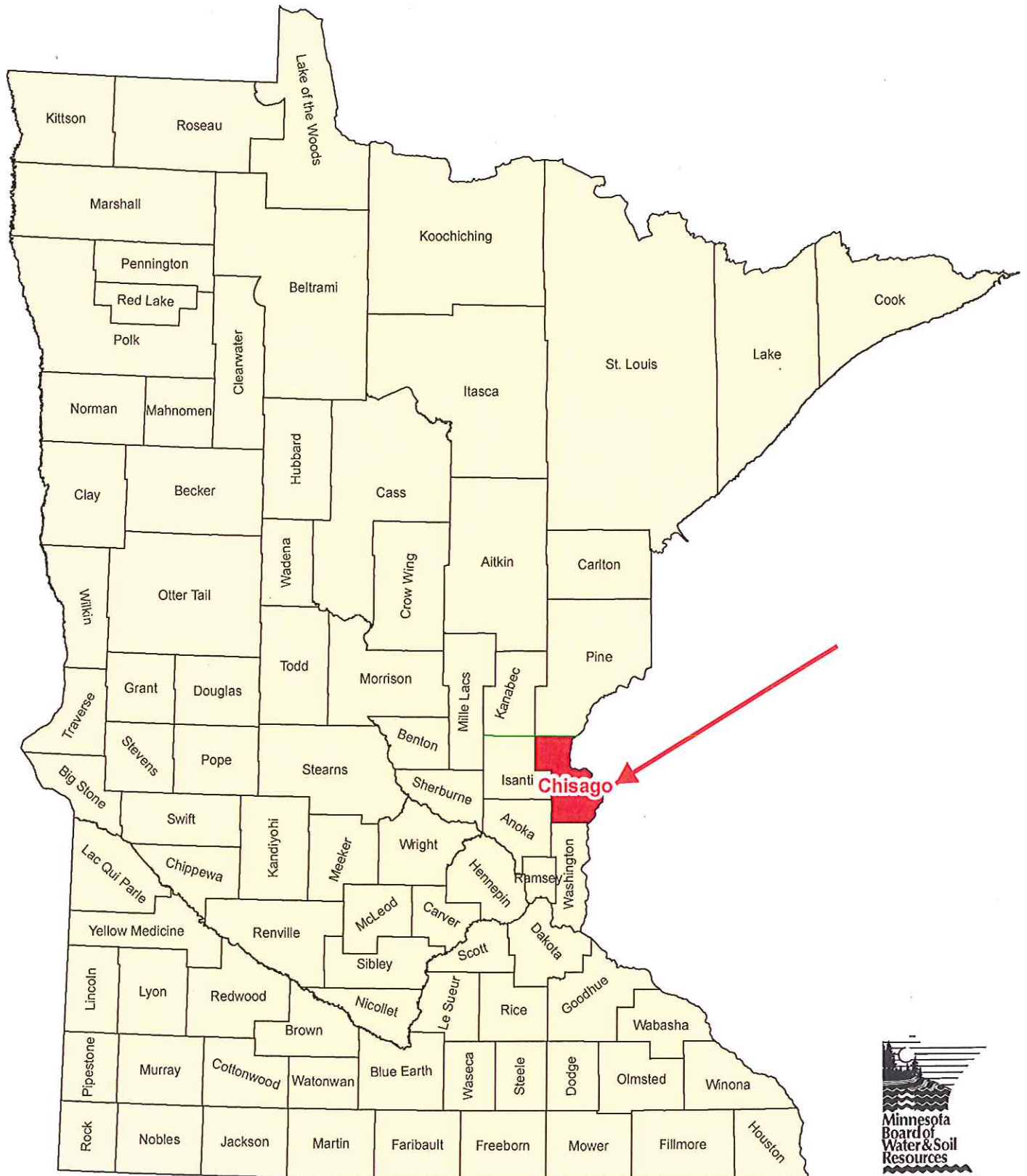
ACTION REQUESTED

Approval of Chisago County Priority Concerns Scoping Document (PCSD) pertaining to their third generation Water Plan Update (Plan)

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

BWSR received the Chisago County PCSD on August 10, 2012. The state review agencies were notified and submitted their comments to BWSR. The BWSR Metro Water Planning Committee (Committee) met on October 1, 2012, to discuss the content of the PCSD, state review agency comments and recommendations for the content of the final Plan. All required components of the PCSD have been covered and the priority concerns to be addressed are deemed to be appropriate. The Committee voted unanimously to recommend the draft official state comment letter pertaining to the review of the Chisago County PCSD be considered and sent to the county.

Chisago County





October 24, 2012

Chisago County Commissioners
c/o Jerry Spetzman, Water Plan Coordinator
Department of Environmental Services/Zoning
313 North Main Street
Center City, Minnesota 55012

RE: Official State Comments Pertaining to the Review of Chisago County Priority Concerns Scoping Document (PCSD) for the Third Generation Water Management Plan Update

Dear Chisago County Commissioners:

Pursuant to MS Section 103B.313, subdivision 5, this letter communicates the State's official comments pertaining to the priority concerns that Chisago County has chosen to address in the update of their Comprehensive Local Water Management (LWM) Plan. The Board of Water and Soil Resources (BWSR) received the Chisago County PCSD on August 10, 2012. The State review agencies received notification on August 13, 2012, and submitted their comments to BWSR.

Chisago County has reviewed the identified concerns raised during the public input process and selected the following priority concerns for inclusion in the revision of the LWM Plan as listed below.

1. To protect the quality and quantity of ground water used for drinking water.
2. The introduction or spread of aquatic invasive species and the negative effect on water quality, navigation recreation and fisheries.
3. Septic systems which are failing, noncompliant or an imminent threat to public health.
4. The influence of agricultural, rural and urban land use practices on water quality.
5. That citizens and elected officials receive accurate, understandable information to make informed decision.
6. To obtain sufficient resources to achieve goals established in the Water Plan.

BWSR received comments from the MPCA, MDA, MDH and MDNR during the official review period. No agency comments were received from the Environmental Quality Board. The MPCA, MDA, and MDH concur with the priority concerns identified and felt the priority concern identification process was commendable. MPCA and MDNR offered additional comments to be considered when drafting the LWM Plan. MDNR noted that the PCSD does not violate any statutory or rule requirements administered by their agency. Agency staff have been engaged throughout the PCSD development process.

Bemidji 403 Fourth Street NW Suite 200 Bemidji, MN 56601 (218) 755-2600	Brainerd 1601 Minnesota Drive Brainerd, MN 56401 (218) 828-2383	Duluth 394 S. Lake Avenue Suite 403 Duluth, MN 55802 (218) 723-4752	Fergus Falls 1004 Frontier Drive Fergus Falls, MN 56537 (218) 736-5445	Mankato 1160 Victory Drive South Suite 5 Mankato, MN 56601 (507) 389-6784	Marshall 1400 East Lyon Street Marshall, MN 56258 (507) 537-6060	New Ulm 261 Highway 15 South New Ulm, MN 56073 (507) 359-6074	Rochester 3555 9 th Street NW Suite 350 Rochester, MN 55901 (507) 206-2889
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The BWSR Metro Water Planning Committee (Committee) met on October 1, 2012, to discuss the content of the PCSD, state review agency comments and recommendations for the content of the final LWM Plan.

The Committee commends Chisago County for the process they used to select the concerns – including soliciting input from local government, citizens, and state agencies that involved surveys, public forums, and many one-on-one contacts with county partners – and incorporating that information into the six priority concern areas. The priority concerns to be addressed in the LWM Plan are deemed to be appropriate; the Subcommittee does not recommend or require any changes to the PCSD as drafted. We look forward to participating in the completion of your plan and its ultimate implementation.

Sincerely,

Brian Napstad, Chair
Minnesota Board of Water and Soil Resources

cc: Robert Sip, MDA
David L. Johnson, MPCA
Michele Hanson, MDNR
Art Persons, MDH
Jess Richards, MEQB
Jim Haertel, BWSR
Mary Kells, BWSR

NEW BUSINESS

1A. Adoption of Rule Amendments for the Erosion Control and Water Management and Reinvest in Minnesota Reserve Programs (Rule Chapter 8400) – Dave Weirens – ***DECISION ITEM***

1B. Adoption of the Proposed Erosion Control and Water Management Program Policy – Dave Weirens – ***DECISION ITEM***

2. 2013 Proposed BWSR Board Meeting Schedule – John Jaschke – ***DECISION ITEM***

3. 2012 Strategic Plan Report Card – Don Buckhout – ***INFORMATION ITEM***

4. BWSR 25th Anniversary – Jen Maleitzke/John Jaschke – ***INFORMATION ITEM***



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE:

Adoption of Rule Amendments for the Erosion
Control and Water Management and Reinvest in
Minnesota Reserve Programs (Rule Chapter
8400)¹

Meeting Date: October 24, 2012

Agenda Category: ☒ Committee Recommendation ☐ New Business ☐ Old Business

Item Type: ☒ Decision ☐ Discussion ☐ Information

Section/Region: Land and Water Section/Easement Section

Contact: Dave Weirens/Tim Koehler

Prepared by: Dave Weirens

Reviewed by: Grants Program and Policy Committee(s)

Presented by: Dave Weirens

☐ Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: ☒ Resolution ☐ Order ☐ Map ☒ Other Supporting Information

Fiscal/Policy Impact

☐ None

☐ Amended Policy Requested

☒ New Policy Requested

☐ General Fund Budget

☐ Capital Budget

☐ Outdoor Heritage Fund Budget

☐ Clean Water Fund Budget

☐ Other: _____

ACTION REQUESTED

The Grants Program and Policy Committee is meeting on October 23, 2012 to review and consider the:

1. Proposed Amendments to the Permanent Rules (Rules Chapter 8400) Relating to Land and Water Treatment Program (i.e. Erosion Control and Water Management Program (State Conservation Cost-Share) and Reinvest in Minnesota Reserve Programs); and
2. Proposed Erosion Control and Water Management Program Policy.

Staff are asking the Committee on October 23 to recommend the Board adopt these documents and authorize completion of the rulemaking process. The Board will be asked to consider the Committee's recommendation on October 24.

SUMMARY (Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)

Amendments to the statutes that govern the State Conservation Cost Share and Reinvest in Minnesota Reserve Programs were enacted in 2009. Amendments to these rules have been under development for more than two years, and a Notice of Intent to Adopt (the Rules) Without a Public Hearing was published in the State Register on May 7, 2012. This Notice established a comment period through June 6, 2012. This Notice was later amended to extend the comment period through June 11, 2012. 41 requests for a public hearing were received. The Administrative Procedures Act provides that a public hearing must be held if at least 25 requests are received during the public comment period.

Commenters raised several issues, chief among them was a proposed change that would allow BWSR to implement the RIM program through "authorized agents". To address the issues raised in the comments, a meeting was held on August 27 with the individuals that had requested a public hearing and representatives of the Mn Association of Soil and Water Conservation Districts. Several changes were made to the proposed rule and draft policy as a result of this meeting. Subsequently, 21 of the 41 requests for a public hearing were withdrawn. Staff are now proposing to continue the rulemaking process.



Resolution # _____

Cost Share and Reinvest in Minnesota (RIM) Reserve Programs:

- **Adopt Rule Amendments and Authorize Completion of the Rulemaking Process; and**
- **Adopt the Erosion Control and Water Management Policy.**

WHEREAS, the Board of Water and Soil Resources is authorized by Minnesota Statutes 103C.501 to adopt rules to implement the Erosion Control and Water Management Program (Cost Share), and Minnesota Statutes 103F.531 authorizes the Board to adopt rules governing the RIM Reserve Program; and

WHEREAS, a notice of request for comments on planned amendments to these rules governing the Erosion Control and Water Management Program (Cost Share) and the RIM Reserve Program was published in the State Register on June 21, 2010; and

WHEREAS, the BWSR Staff Cost Share Work Group has met beginning in March 2009 to:

- draft rule amendments,
- draft Erosion Control and Water Management Policy that accompanies the rule and is required to Minnesota Statutes 103C.501, and
- update the Statewide Program Manual that will guide program implementation by soil and water conservation districts; and

WHEREAS, soil and water conservation districts were notified of the proposed rule changes and new Policy on June 21, 2010, November 2, 2010, May 4, 2012, August 31, 2011, June 20, 2012, July 13, 2012 and October 15, 2012; and,

WHEREAS, the proposed rule includes changes necessary to:

- i) Incorporate statutory changes that have occurred in the RIM Reserve Law (103F.505 to 103F.531);
- ii) Incorporate statutory amendments to the Cost-Share Program enacted in 2009, including a directive to adopt Program Policies (103C.501);
- iii) Increase the administrative efficiencies for both SWCDs and BWSR;
- iv) Respond to evolving resource management strategies by accommodating greater use of other Best Management Practices (BMPs); and
- v) Improving the clarity of the permanent rule; and

WHEREAS, the Board's Grants Program and Policy Committee met on December 16, 2009, June 8, 2010, March 10, 2011, May 23, 2012 and October 23, 2012 to review the draft rule, review the draft policy, provide direction to staff, and develop a recommendation regarding adoption of the rule for the Board consideration; and

WHEREAS, the RIM Reserve Management Planning Committee met on February 23, 2011 to review the draft rule, provide direction to staff, and develop a recommendation regarding adoption of the rule for the Board consideration; and

WHEREAS, Notice of Intent to Adopt (the Rules) Without a Public Hearing was published in the State Register on May 7, 2012. This Notice established a comment period through June 6, 2012. This Notice was later amended to extend the comment period through June 11, 2012; and

WHEREAS, 41 requests for a public hearing were received during the public comment period; and

WHEREAS, the Administrative Procedures Act provides that a public hearing must be held if 25 requests are received during the public comment period; and

WHEREAS, a meeting was held on August 27, 2012 with the individuals that had requested a public hearing and representatives of the Mn Association of Soil and Water Conservation Districts to address the issues raised during the public comment period; and

WHEREAS, several changes were made to the proposed rule and draft policy as a result of this meeting and, subsequently, 21 of the 41 requests for a public hearing were withdrawn; and

WHEREAS, the Board's Grants Program and Policy Committee met on October 23, 2012 to review the draft rule, review the draft policy, provide direction to staff, and is recommending the Board adopt the Rule and the Erosion Control and Water Management Policy; and

NOW THEREFORE BE IT RESOLVED, the Board of Water and Soil Resources hereby:

- (1) Adopts the Erosion Control and Water Management Program (commonly referred to as State Cost Share) and the RIM Reserve Program (Minn. Rule Chapter 8400), approves the Statement of Need and Reasonableness and authorizes staff to complete the processes necessary to adopt the rule; and
- (2) Adopts the Erosion Control and Water Management Policy.

Brian Napstad, Chair

Date

CHAPTER 8400

BOARD OF WATER AND SOIL RESOURCES

LAND AND WATER TREATMENT COST-SHARE PROGRAM

8400.0050 PURPOSE.

DEFINITIONS EROSION CONTROL AND WATER MANAGEMENT PROGRAM

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~~8400.1200 COOPERATIVE AND JOINT PROJECTS OF CONSERVATION DISTRICTS.~~

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8400.0050 PURPOSE.

The state-cost-share land and water treatment program is administered through local conservation districts to provide financial and technical assistance to land occupiers for the application of conservation practices that reduce erosion, control sedimentation, or improve and protect water quality, or address water quantity problems due to altered hydrology to ensure the sustainable use of Minnesota's natural resources.

Statutory Authority: *MS s 103C.501*

History: *20 SR 2185*

Posted: *October 4, 2001*

DEFINITIONS EROSION CONTROL AND WATER MANAGEMENT PROGRAM

8400.XXXX AUTHORITY.

Minnesota Statutes, section 103C.501, authorizes the state board, in cooperation with the districts, to administer a program of cost-sharing with land occupiers for the installation of soil and water conservation practices. Parts 8400.0050 to 8400.1900 provide procedures and criteria to be followed by the state board in allocating cost-sharing funds to districts, and standards and guidelines that the district boards shall use in allocating funds to land occupiers.

8400.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 8400.0050 to 8400.~~1800~~1900, the definitions in this part, in addition to those in Minnesota Statutes, chapter 103C, apply.

Subp. 1a. [Repealed, 20 SR 2185]

Subp. 2. [Repealed, 20 SR 2185]

Subp. 2a. **Administrative Guidelines.** "~~Administrative Guidelines~~" means the ~~Administrative Guidelines~~ for the State Cost Share Program, being the most current compilation of the approved practices, practice-guidelines, administrative guidelines, and examples of administrative forms provided to conservation districts by the state board to assist in locally administering the state cost share program. The publication is not subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 3. **Annual work plan.** "Annual work plan" means a plan prepared by the conservation district pursuant to Minnesota Statutes, section 103C.331, subdivision 11, paragraph (e), and according to the most recent policy version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is not subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 4. **Approved practice.** "~~Approved practice~~" means a conservation practice that qualifies for state cost sharing and that has been approved by the state board.

Subp. 5. [Repealed, 20 SR 2185]

Subp. 5a. **Comprehensive local water plan.** "Comprehensive local water plan" means a local water plan authorized under Minnesota Statutes, section 103B.311; a watershed overall plan required under Minnesota Statutes, section 103D.401; a watershed management plan required under Minnesota Statutes, section 103B.231; or a county groundwater plan authorized under Minnesota Statutes, section 103B.255.

Subp. 6. [Repealed, 20 SR 2185]

Subp. 7. [Repealed, 9 SR 2439]

Subp. 7a. [Repealed, 20 SR 2185]

Subp. 8. **Comprehensive plan.** "Comprehensive plan" means a long-range plan adopted by the conservation district pursuant to Minnesota Statutes, section 103C.331, subdivision 11, and according to the most recent policy version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is not subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 8a. [Repealed, 20 SR 2185]

Subp. 9. **~~Conservation d~~District.** "~~Conservation d~~District" means a soil and water conservation district organized under Minnesota Statutes, chapter 103C.

Subp. 10. **~~Conservation d~~District board.** "~~Conservation d~~District board" means the board of supervisors of a soil and water conservation district as organized under Minnesota Statutes, chapter 103C.

Subp. 10a. **~~Conservation district technical representative.~~** "~~Conservation district technical representative~~" means a district employee assigned by the conservation district board or other designee who has expertise in the design and application of conservation practices.

Subp. 10b. **Conservation practices.** "Conservation practices" means practices applied to the land for the purpose of controlling or preventing soil erosion, sedimentation, nutrient runoff, or other water pollution to maintain the sustainable use of soil and water and other natural resources.

Subp. 11. [Repealed, 20 SR 2185]

Subp. 12. [Repealed, 20 SR 2185]

Subp. 13. [Repealed, 20 SR 2185]

Subp. 14. **Effective life.** "Effective life" means the time span for which a conservation practice effectively fulfills its intended purpose.

Subp. 14a. [Repealed, 20 SR 2185]

Subp. 14b. ~~Farm Service Agency.~~ "Farm Service Agency" means the Farm Service Agency, an agency of the United States Department of Agriculture.

Subp. 15. ~~Field Office Technical Guide.~~ "Field Office Technical Guide" means the document providing technical standards and specifications for conservation practices as provided by the Natural Resource Conservation Service and adopted by the conservation district board.

Subp. 16. ~~Group spokesperson.~~ "Group spokesperson" means a principal land occupier designated by the individuals involved in a group project who is authorized to speak for the entire group in negotiations with a conservation district for cost-share assistance.

Subp. 16a. ~~High priority erosion problems.~~ "High priority erosion problems" means areas where erosion from wind or water is occurring equal to, or in excess of, 2 x T tons per acre per year or is occurring on any area that exhibits active gully erosion or is identified as high priority in the comprehensive local water plan or the conservation district's comprehensive plan.

Subp. 16b. ~~High priority water quality problems.~~ "High priority water quality problems" means areas where sediment, nutrients, chemicals, or other pollutants discharge to Department of Natural Resources-designated protected waters or to any high priority waters as identified in a comprehensive local water plan or the conservation district's comprehensive plan, or discharge to a sinkhole or groundwater. The pollutant delivery rate to the water source is in amounts that will impair the quality or usefulness of the water resource.

Subp. 17. [Repealed, 9 SR 2439]

Subp. 18. ~~Land occupier.~~ "Land occupier" means a person, corporation, or legal entity that holds title to or is in possession of land within a conservation district as an owner, lessee, tenant, or otherwise.

Subp. 18a. ~~Landowner.~~ "Landowner" means a person, corporation, or legal entity that holds title to a parcel of land.

Subp. 18b. ~~Natural Resource Conservation Service.~~ "Natural Resource Conservation Service" means the Natural Resource Conservation Service, an agency of the United States Department of Agriculture.

Subp. 19. [Repealed, 20 SR 2185]

Subp. 19a. ~~Other recognized technical practices.~~ "Other recognized technical practices" means any conservation practice or compilation of such practices not on the approved list of conservation practices that have been approved by the state board for cost-share assistance on a case-by-case basis.

Subp. 20. [Repealed, 20 SR 2185]

Subp. 20a. ~~Protected waters.~~ "Protected waters" means those waters of the state identified as public waters or wetlands under Minnesota Statutes, section 103G.005, subdivision 15, and inventoried under Minnesota Statutes, section 103G.201, and identified on a protected waters inventory map available in a county auditor's office.

Subp. 20b. ~~Registered professional engineer.~~ "Registered professional engineer" means a person who is duly registered to practice professional engineering according to Minnesota Statutes, sections 326.02 to 326.15.

Subp. 20c. [Repealed, 20 SR 2185]

Subp. 20d. ~~Sinkhole.~~ "Sinkhole" means a depression or hole in the earth's surface caused by dissolving of underlying limestone carbonate bedrock and subsequent settling or collapse of surficial soils.

Subp. 21. [Repealed, 20 SR 2185]

Subp. 22. [Repealed, 20 SR 2185]

Subp. 22a. ~~Special project.~~ "Special project" means a conservation project or program including but not limited to those projects or programs that accelerate implementation of innovative soil and water conservation activities.

Subp. 23. **State board.** "State board" means the state Board of Water and Soil Resources created in Minnesota Statutes, section 103B.101.

Subp. 24. [Repealed, 9 SR 2439]

Subp. 25. ~~T. "T"~~ means the soil loss tolerance that is the maximum average annual rate of soil loss from sheet and rill erosion or wind erosion, expressed in tons per acre per year, that is allowed yet still sustains the productive capacity of the soil to produce food and fiber over the long term.

Subp. 26. ~~2 x T. "2 x T"~~ means soil erosion at the rate of two times T.

Subp. 27. **Technical approval authority.** "Technical approval authority" means the authorization granted in accordance with the administrative guidelines for the state cost share program to a conservation district technical representative to provide comprehensive technical assistance for individual conservation practices, including associated technical sign-off as the conservation district technical representative of record.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; L 1987 c 358 s 34; 20 SR 2185*

Posted: *October 4, 2001*

8400.0200 AUTHORITY.

Minnesota Statutes, section 103C.501, authorizes the state board, in cooperation with the conservation districts, to administer a program of cost sharing with land occupiers for the installation of soil and water conservation practices. Parts 8400.0050 to 8400.1800 provide procedures and criteria to be followed by the state board in allocating cost-sharing funds to conservation districts, and standards and guidelines that the conservation district boards shall use in allocating funds to land occupiers.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; L 1987 c 358 s 34; 20 SR 2185*

Posted: *October 4, 2001*

STATE BOARD FUNCTIONS

8400.xxxx PROGRAM POLICY.

The State board shall adopt policies providing for administration and implementation of Parts 8400.0500 to 8400.1900.

8400.0300 APPROVED CONSERVATION PRACTICES.

Subpart 1. **Approved practices.** The state board, in consultation with the conservation districts, shall maintain a list of practices that are eligible for cost share funds, along with guidelines pertaining to the components of the practices that are eligible or ineligible for cost share funds. The list includes farmstead windbreaks and is contained in the Administrative Guidelines.

Subp. 2. **Criteria for approved conservation practices.** Practices approved by the state board eligible for cost-share funds must meet the criteria in items A to D.

~~A. The primary purpose of all practices must be the control of soil erosion, sedimentation, or chemical or nutrient runoff or infiltration that impairs water quality. Farmstead windbreaks are exempt from this requirement.~~

The objectives of these approved conservation practices may include, but are not limited to, activities that:

- (1.) control nutrient runoff;
- (2.) control sedimentation;
- (3.) divert runoff to protect and improve water quality;
- (4.) reduce wind erosion;
- (5.) control gully, rill, or sheet erosion;
- (6.) protect shoreland from erosion;
- (7.) control stormwater runoff;
- (8.) protect or improve surface water and groundwater quality;
- (9.) provide energy conservation and snow protection; or
- (10.) alleviate water quantity problems due to altered hydrology.

~~B. All practices cost-shared under this program must be designed and maintained for a minimum effective life of ten years. The beginning date for a practice's effective life is the same date the conservation district board approves the final payment and the project is considered complete. Restoration, protection or enhancement of natural wildlife, aquatic or native plant habitat practices are eligible when used in combination with the practices listed in item A.~~

~~C. No cost-share funds shall be furnished for conservation practices designed primarily only to increase land productivity.~~

~~D. All conservation practices must be consistent with the district's comprehensive plan.~~

~~Subp. 3. Objectives of approved practices. The Administrative Guidelines contains a list of approved practices. The objectives of these approved practices may include, but are not limited to, activities that:~~

- ~~A. control nutrient runoff;~~
- ~~B. stabilize critical erosive areas;~~
- ~~C. divert runoff to protect and improve water quality;~~
- ~~D. reduce wind erosion;~~
- ~~E. control gully, rill, or sheet erosion;~~
- ~~F. protect shoreland from erosion;~~
- ~~G. control stormwater runoff; or~~
- ~~H. protect or improve surface water and groundwater quality;~~

~~Approved practices must meet the criteria listed in subpart 2.~~

Statutory Authority: *MS s 40.036; 103C.501; L 1999 c 231 s 203*

History: *9 SR 2439; 20 SR 2185; 24 SR 1240*

Posted: *October 4, 2001*

8400.0400 [Repealed, 20 SR 2185]

Posted: October 4, 2001

8400.0500 MAXIMUM COST-SHARE RATES.

The maximum cost-share rates established by the state board represent the maximum percent or amount of the total cost of a conservation practice that may be funded by using state cost-share funds. ~~Where state and federal funds are cost-shared on the same project, their combined amount shall not exceed the maximum cost-share rate.~~

Statutory Authority: *MS s 40.036*

Posted: October 4, 2001

8400.xxxx RECORDING CONSERVATION PRACTICES

The state board may determine that long-term maintenance of a conservation practice is desirable and may require that maintenance be made a covenant upon the land for the effective life of the practice. A covenant under this subdivision shall be construed in the same manner as a conservation restriction under 84.65.

8400.0600 STATE BOARD ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS.

~~Subpart 1. Comprehensive plan. Before the state board can allocate cost-share funds to a conservation district it must approve the conservation district's comprehensive plan, including its most recent amendment and the annual work plan, that includes the application and justification for needed cost-share funds. The plans must be in a format required by Minnesota Statutes, section 103C.331, subdivision 11, and the state board.~~

Subp. 2. [Repealed, 9 SR 2439]

Subp. 3. Review criteria. The state board shall review all conservation district applications for cost-share funds based on the following criteria:-

A. ~~the extent of high priority erosion or water quality problems in the conservation district as outlined in the conservation district comprehensive and annual plans and comprehensive local water plan;~~

B. ~~priorities for the control of soil erosion or water quality problems as established in the Administrative Guidelines of the state board;~~

C. ~~historical success of the conservation district in applying soil and water conservation practices;~~

D. ~~availability of cost-share funds from other sources; and~~

E. ~~the ability of the conservation district to expend the funds in a timely manner.~~

Subp. 4. Grants to conservation districts. The state board may shall annually allocate cost-share funds to conservation district boards that have fully complied with Minnesota Statutes, section 103C.501, subdivision 3; all state cost-share erosion control and water management program rules; and program policies and comprehensive and annual planning guidelines as prescribed by the state board. At least 70 percent of the cost-sharing funds available statewide will be allocated to conservation districts in the form of grants for conservation practices addressing high priority erosion, sedimentation, or water quality problems. The remaining cost-share funds may be allocated by the board to conservation districts for conservation practices for lower priority erosion, sedimentation, or water quality problems and for technical and administrative assistance or to carry out special projects or programs, except not more than 20 percent of the total funds may be allocated for technical and administrative services.

Subp. 5. **Other state and federal funds.** Other funds received by the state board may be allocated to conservation districts for the treatment of erosion, sedimentation, or water quality problems, or water quantity problems due to altered hydrology. These additional funds may be incorporated with existing cost-share erosion control and water management program funds and their use may be governed by the program policy Administrative Guidelines or may be subject to other administrative policies or guidelines required to fully implement the intent for which these additional funds were appropriated.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

Posted: *October 4, 2001*

8400.0700 PROGRAM REPORTING AND MONITORING.

For the purpose of reporting and monitoring the progress of the program and use of funds, each conservation district shall submit an annual report of the year's accomplishments according to the guidelines and requirements established by the state board. The state board shall require additional special reports, including, but not limited to, summaries of practice site inspections and special projects.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

Posted: *October 4, 2001*

DISTRICT FUNCTIONS

8400.0800 APPLICATION FOR FUNDS BY DISTRICTS.

Each district shall apply for funds as indicated in part 8400.0600.

Statutory Authority: *MS s 40.036*

Posted: *October 4, 2001*

8400.0900 CONSERVATION DISTRICT ADMINISTRATION OF PROGRAM FUNDS.

Subpart 1. **General.** Following receipt of grant funds from the state board, a conservation district is responsible for administration of the funds in accordance with Minnesota Statutes, chapter 103C, the Administrative Guidelines, and all other applicable laws. The conservation district board shall make all decisions concerning use of these funds in accordance with parts 8400.0050 to 8400.1800-1900, the Administrative Guidelines program policies, and all other applicable laws. All funds allocated to conservation districts must be used for the purposes designated by the state board.

Subp. 2. **Maximum cost-share rate percentage.** Prior to considering any applications from land occupiers for cost-share assistance, the conservation district board shall establish cost-share rates for conservation practices to be installed under the program, up to the maximum rates established by the state board. The maximum percent of the total eligible cost of the practices installed using state cost-share funds must not exceed 75 percent. Other state or federal funds from any source, when used in combination with cost-share funds of this program, must not exceed the maximum payment rate of 75 percent of the total eligible costs. The conservation district board shall establish cost-share rates based on the following factors:-

A. the extent of high priority erosion or water quality problems in the conservation district as outlined in the conservation district's comprehensive and annual plans;-

B. advice of technical experts familiar with the conservation district;-

~~C. cost-share rates currently in effect under the agricultural conservation program administered by the United States Farm Service Agency and other assistance programs;~~

~~D. conservation district priorities as established in the conservation district's comprehensive and annual plans and comprehensive local water plan;~~

~~E. cost-share funds available; and~~

~~F. the state board's Administrative Guidelines.~~

The maximum cost-share rates must be identified in the conservation district's annual plan and other documents containing the policies of the conservation district.

Subp. 3. **Reencumbering funds.** Prior to the end of the grant period for which the state board has granted the cost-share funds, a conservation district board may reencumber all funds resulting from canceled projects or from those projects that did not use the full amount encumbered. For unencumbered funds remaining after the grant period, the conservation district board shall follow the procedures described in part 8400.1460.

Criteria for district board review. The district board shall use the following factors to determine practice eligibility and review of applications for conservation practice funding:

A. The application must be signed by the land occupier and the landowner, if different, indicating their agreement to:

(1) grant the district's representatives access to the parcel where the conservation practice will be located;

(2) obtain all permits required in conjunction with the installation and establishment of the practice prior to starting construction of the practice; and

(3) be responsible for operation and maintenance of conservation practices applied under this program according to an operation and maintenance plan prepared or approved by the a district technical representative or its delegate.

B. Costs to repair damage to conservation practices installed with state cost-share dollars are eligible if the damage was caused by reasons beyond the control of the land occupier.

C. If the practice has fully met or exceeded its designed effective life, the cost to reconstruct the practice is eligible for cost-share assistance.

D. Conservation practices where construction has begun prior to district approval are ineligible for financial assistance. The Board may waive this requirement for emergency needs.

Subp. 4. Entering into a contract. After completion of the district board, or its delegate, review of practice eligibility, the district board, or its delegate, shall either approve or deny the application.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

Posted: *October 4, 2001*

~~8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS.~~

Land occupiers seeking assistance under this program shall apply to the conservation districts on forms provided by the state board and available from the conservation district office. Each application must be filled out in its entirety and must be signed by the land occupier. If the land occupier is not the landowner, the application must also bear the landowner's signature.

Statutory Authority: *MS s 40.036; 103C.501*

History: 9 SR 2439; 20 SR 2185

Posted: October 4, 2001

8400.1100 GROUP PROJECT.

Where the cooperation of several land occupiers is required to solve an erosion or water quality problem, the conservation district may share the cost of such a group project if all of the land occupiers are eligible as individuals and the practices satisfy the criteria of the program. The land occupiers must reach agreement on division of payments and designate a group spokesperson. The spokesperson must sign the application on behalf of the group and negotiate all project details with the conservation district. Payment for the conservation district's share of the practice shall be issued to the group spokesperson who will be responsible for executing the division of payment plan prepared by the group.

Statutory Authority: MS s 40.036; 103C.501

History: 9 SR 2439; 20 SR 2185

Posted: October 4, 2001

8400.1200 COOPERATIVE AND JOINT PROJECTS OF CONSERVATION DISTRICTS.

Subpart 1. Land in more than one conservation district. If a project involves land in more than one conservation district, application for the entire project must be made to the conservation district containing the majority of the project lands.

Subp. 2. Pooling cost share allocation for joint projects. Conservation district boards may enter into an agreement to pool all or portions of their collective cost share allocations to implement joint projects. Cooperative and joint projects may be undertaken to accomplish watershed-based resource management goals or other goals of mutual benefit as identified in the county's comprehensive local water plan or the district's comprehensive plan.

Statutory Authority: MS s 40.036; 103C.501

History: 9 SR 2439; 20 SR 2185

Posted: October 4, 2001

8400.1250 TECHNICAL ASSESSMENT AND COST ESTIMATE DETERMINATION.

A determination of the effectiveness of a practice to address the erosion or water quality problem and a cost estimate must be made by the conservation district technical representative prior to the conservation district board's review of the application for cost share funds. The assessment and cost estimate must be conducted by an individual with the appropriate level of technical approval authority or by a registered engineer with expertise in the design of the conservation practices.

Statutory Authority: MS s 103C.501

History: 20 SR 2185

Posted: October 4, 2001

8400.1300 CRITERIA FOR CONSERVATION DISTRICT BOARD REVIEW.

Criteria for conservation district board review:

A. The practice needed to solve the problem must be on the list of approved practices presented in the Administrative Guidelines or must have received approval from the state board.

B. The primary purpose of the requested practice must be to treat a high priority erosion problem or high priority water quality problem, except for farmstead windbreaks.

C. The requested practice must be consistent with conservation district plans and priorities.

~~D. The application must be signed by the land occupier and the landowner, if different, indicating their agreement to:-~~

~~(1) grant the soil and water conservation district's representatives access to the parcel where the conservation practice will be located;-~~

~~(2) obtain all permits required in conjunction with the installation and establishment of the practice prior to starting construction of the practice;- and~~

~~(3) be responsible for operation and maintenance of practices applied under this program according to an operation and maintenance plan prepared by the conservation district technical representative.-~~

~~E. Costs to repair damage to conservation practices installed with state cost-share dollars are eligible if the damage was caused by reasons beyond the control of the land occupier.-~~

~~F. If the practice has fully met or exceeded its designed effective life, the cost to reconstruct the practice is eligible for cost-share assistance.-~~

Statutory Authority: *MS s 40.036; 103C.501; L 1999 c 231 s 203*

History: *9 SR 2439; 20 SR 2185; 24 SR 1240*

Posted: *October 4, 2001*

8400.1400 CONSERVATION DISTRICT APPROVAL.

Subpart . 1. General. After completion of the conservation district board review, the conservation district board shall either approve or deny the application. If it is approved, the conservation district board shall instruct the chair or acting chair to sign the application. Once it is signed, the application becomes the contract between the conservation district and land occupier and serves as the authorization to construct the practice according to the approved conservation practice plan. Practices where construction has begun prior to conservation district approval are ineligible for financial assistance. Changes in any provisions of the contract are subject to review and approval by the conservation district board pursuant to part 8400.1600, subpart 1.

If the application is denied, the conservation district board shall notify the land occupier in writing within 30 days after conservation district board action of the reason for denial.

Subp. 2. Conservation practice plans. The project plans for conservation practices must be prepared according to standards in the Field Office Technical Guide or other standards approved by the state board and must be approved by a conservation district technical representative with the appropriate level of technical approval authority. Plans prepared by a registered professional engineer must meet Field Office Technical Guide standards, meet other standards approved by the state board, or be certified as appropriate standards by the registered professional engineer. Upon completion and technical approval of the plan, one copy must be given to the land occupier and one copy retained with the project file located in the conservation district office.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 17 SR 1279; 20 SR 2185*

Posted: *October 4, 2001*

8400.1405 PROJECT DEADLINES AND PARTIAL PAYMENT.

Subpart 1. Time limit and cancellation. Projects not started within 18 months after conservation district board approval must be canceled unless an amendment to the project contract has been approved by the conservation district board. Projects not completed by the end of the state's third fiscal year after initial conservation district board approval must be canceled unless prior written approval of the state board has been received.

Subp. 2. Partial payment. In cases where weather or other unanticipated circumstances beyond the control of the land occupier force postponement of certification of completion until the following construction season,

~~the conservation district board may issue a partial payment for the work that has been completed. The conservation district board shall not consider issuing a partial payment unless:-~~

- ~~A. the anticipated completion date complies with subpart 1;~~
- ~~B. the completed work meets the requirements of part 8400.1400, subpart 2; and~~
- ~~C. the conservation district technical representative has reviewed the work and has defined the total percent of construction that is complete.~~

~~Subp. 3. Partial payment conditions. If the conservation district issues a partial payment under subpart 2, the following conditions apply:-~~

- ~~A. payment percentages must comply with part 8400.0900, subpart 2;~~
- ~~B. the balance of the project must be paid by the conservation district board upon the satisfactory completion of the total project;~~
- ~~C. all expenses incurred to correct damage caused by the land occupier's failure to expeditiously complete the conservation practice must be borne by the land occupier;~~
- ~~D. land occupiers receiving partial payments must complete the project within a time deemed reasonable by the conservation district board; and~~
- ~~E. land occupiers not completing partially paid projects shall be considered as violating part 8400.1700 and shall be directed, unless otherwise authorized by the state board as provided elsewhere in part 8400.1700, to return the amount of financial assistance received.~~

~~Every request for partial payment will be considered by the conservation district board on its own merits.~~

~~Subp. 4. Denial. If the conservation district board denies a request for partial payment under subpart 2, the board shall notify the land occupier within 30 days of the reasons for denial of the request.~~

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

Posted: *October 4, 2001*

~~8400.1460 RETURN OF ALLOCATED FUNDS.~~

~~Cost-share funds unencumbered by the conservation district board after the grant period must be returned to the state board within 30 calendar days following the end of that grant period.~~

Statutory Authority: *MS s 103C.501*

History: *20 SR 2185*

Posted: *October 4, 2001*

~~8400.1500 CONSERVATION DISTRICT RECORDS.~~

~~The conservation district shall maintain a current ledger of all cost-share contracts on forms provided by the state board. The ledger must specify the land occupiers with whom the conservation district has contracted, the practices involved, the status of construction, and a total of funds encumbered. The conservation district shall also document efforts to identify and contact land occupiers with high-priority erosion problems.~~

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

Posted: *October 4, 2001*

~~8400.1600 EXECUTING THE COST-SHARE CONTRACT.~~

~~Subpart 1. Amending cost-share contracts.~~ Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to amend the original cost-share contract. If changes to the original cost-share contract are needed, an amendment must be approved by the conservation district board. The conservation district board shall not approve amendments that increase the originally approved cost-share percentage, nor shall the conservation district board approve any amendments after the approval to issue final payment on the original contract has been made.

~~Subp. 2. Construction of practice.~~ Construction of the practices must be monitored by the conservation district board to ensure compliance with part 8400.1400, subpart 2. Upon completion, the conservation district technical representative with appropriate technical approval authority or the registered engineer shall certify whether the practice has been satisfactorily constructed according to the approved conservation practice plans and meets the design criteria of the practice as specified in the Field Office Technical Guide or other standards certifiable by a registered professional engineer or other standards approved by the state board. No certification shall be made until all specifications have been satisfied. Exceptions for partial completion must be according to part 8400.1405, subpart 3. Upon certification of completion, the land occupier shall contact the conservation district for payment and shall present documentation of all costs incurred in the installation of the practice in the form of receipts or invoices.

~~Subp. 3. In-kind services and materials.~~ In-kind services and materials provided by the land occupier such as, but not limited to, earth work, seedbed preparation, seeding, and permanent fencing materials may be credited toward the land occupier's share of the total cost of the practice. The conservation district board shall determine whether charges for in-kind services and materials are practical and reasonable.

~~Subp. 4. Actual cost different than estimated cost.~~ In cases where the actual cost of the practice exceeds the estimated cost, the conservation district may only share the approved percentage of the estimated cost, except when an amendment to increase the cost estimate listed on the cost-share contract has been approved by the conservation district board. Where the actual cost is less than the estimated cost, the conservation district shall only share the approved percentage of the actual cost of the practice.

~~Subp. 5. Issuing cost-share payments.~~ The conservation district board shall review the receipts or invoices provided by the land occupier to determine the actual cost of the practice. When the conservation district determines that all claims are practical and reasonable, it shall authorize issuance of a check for the conservation district's share of the practice. If the conservation district board determines that certain claims are not justified, it shall notify the land occupier in writing of the unjustified claims within 30 days. The conservation district board shall then authorize the issuance of a check for the conservation district's share of the justified claims.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

Posted: *October 4, 2001*

8400.1650 RECORDING CONSERVATION PRACTICES.

When a district board, or its delegate, determines that long-term maintenance of a conservation practice is desirable, the board, or its delegate, may require that maintenance be made a covenant upon the land for the effective life of the conservation practice. A covenant under this subdivision shall be construed in the same manner as a conservation restriction under 84.65. The size, location, and effective life of the soil and water-conservation practices that have received cost-share payments under this program equal to or in excess of \$50,000 shall be recorded by the conservation district on the property title. The conservation district board may require the recording of practices where cost-share payments are less than \$50,000 where such action is considered appropriate by the conservation district board. Recording procedures, including the prescribed forms, are described in the administrative guidelines for the state cost-share program.

Statutory Authority: *MS s 103C.501*

History: *20 SR 2185*

Posted: October 4, 2001

8400.1700 MAINTENANCE.

Subpart 1. **Land occupier maintenance responsibilities.** The land occupier is responsible for operation and maintenance of conservation practices applied under this program to ensure that their conservation objective is met and the effective life, ~~a minimum of ten years~~, is achieved. Should the land occupier fail to maintain the conservation practices during their effective life, the land occupier is liable to the state of Minnesota district for up to one-hundred-fifty percent the full amount of financial assistance received to install and establish the conservation practice. The land occupier is not liable for cost-share assistance received if the failure was caused by reasons beyond the land occupier's control, or if ~~soil and water~~ conservation practices are applied at the land occupier's expense which provide equivalent protection of the soil and water resources.

Subp. 2. **Reapplication ~~or removal~~ of conservation practices.** In no case shall a conservation district provide cost-share assistance to a land occupier for the reapplication of conservation practices which were removed by the land occupier during their effective life or that failed due to improper maintenance. ~~The conservation district board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice and the purpose of the original practice has been achieved.~~

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

Posted: October 4, 2001

8400.1750 PRACTICE SITE INSPECTIONS.

~~As a condition to receive grant funds from the state board, the conservation district shall ensure compliance with the maintenance provisions of part 8400.1700 and Minnesota Statutes, chapter 103C, by monitoring all cost-share contracts made with land occupiers. The conservation districts or its delegate shall conduct site inspections of conservation practices installed with cost-share funds to determine if the land occupier is in compliance with the operation and maintenance requirements under part 8400.1700 and the policy, guidelines, and requirements of the state board. Site inspection procedures, including the prescribed forms and frequency, are described in the Administrative Guidelines for the State Cost-Share Program.~~

Statutory Authority: *MS s 103C.501*

History: *20 SR 2185*

Posted: October 4, 2001

8400.1800 APPEALS.

Land occupiers may appeal a conservation district's action within 60 days of receiving notice of the action by submitting a written request to the conservation district board asking the board to reconsider its decision. Should the land occupier and the conservation district board reach an impasse, the land occupier may petition to appeal the conservation district board's decision to the state board within 60 days of receiving notice of the district board's final decision. ~~If an informal hearing is granted, the state board or its appointed mediator shall hear all testimony offered, and shall accept written testimony for ten days after the hearing. The mediator, if one is used, shall report the findings and recommendation to the state board. The state board or its executive director shall review and grant the petition unless it is deemed without sufficient merit within 30 days of the receipt of the petition. The state board shall make its decision on the appeal, if granted, within 60 days of the a hearing date or 60 days after receiving the mediator's report. The state board's decision may uphold, remand, reverse or amend upholding, reversing, or amending the decision of the conservation district board.~~

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 17 SR 1279; 20 SR 2185*

Posted: *October 4, 2001*

8400.1900 REPORTS TO STATE BOARD.

For the purpose of reporting and monitoring the progress of the program and use of funds, each conservation district shall submit an annual report of the year's accomplishments report according to the guidelines and requirements established by the state board. ~~Each district shall submit to the state board the reports identified in part 8400.0700.~~

Statutory Authority: *MS s 40.036*

Posted: *October 4, 2001*

8400.1950 [Repealed, 20 SR 2185]

Posted: October 4, 2001

8400.2000 [Repealed, 20 SR 2185]

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8400.2100 [Repealed, 20 SR 2185]

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8400.2705 [Repealed, 20 SR 2185]

Posted: October 4, 2001

8400.2800 [Repealed, 20 SR 2185]

Posted: October 4, 2001

COST-SHARE RATES EASEMENT PROGRAM

8400.2900 DISTRICT RATES.

Each district shall establish its cost share rates as provided in part 8400.0900.

Statutory Authority: *MS s 40.036*

Posted: *October 4, 2001*

8400.3000 AUTHORITY.

Minnesota Statutes, sections 84.95, 103A.209, and 103F.501 to 103F.531, authorize the state board, in consultation with districts, private groups, and state and federal agencies, to implement a program to (a) acquire permanent easements on land containing type 1, 2, 3, or 6 wetlands; (b) to retire certain marginal agricultural land from agricultural crop production or pasturing and protect environmentally sensitive areas to enhance soil and water quality, minimize damage to flood-prone areas, sequester carbon, and support native plant, fish, and wildlife habitats and to reestablish perennial cover and restore wetlands on that land; and (c) to enhance and protect other private lands. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the state board and district boards in implementing Minnesota Statutes, sections 103F.501 to 103F.531. The state board shall implement the RIM Reserve program with district boards whenever practical, but may also implement the program directly or through its authorized agents.

Statutory Authority: *MS s 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550*

Posted: *October 4, 2001*

8400.3030 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 8400.3000 to 8400.3930.

Subp. 2. **Agricultural crop production.** "Agricultural crop production" means an agricultural activity:

A. including but not limited to tillage, planting, or harvesting operations; and

B. devoted to the production of horticultural, row, close grown, introduced pasture, or introduced hayland crops.

Subp. 3. [Repealed, 14 SR 1928]

Subp. 3a. **Agricultural land.** "Agricultural land" means land devoted for use as pasture or hayland for domestic livestock or dairy animals, or to agricultural crop production, or to growing nursery stocks, or for use as animal feedlots, and may include contiguous land associated with these uses.

Subp. 4. **Annual plan.** "Annual plan" means a plan prepared by the district under Minnesota Statutes, section 103C.331, subdivision 11, and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is subject to periodic change. The current version is available at the district office and state board office and is incorporated by reference.

Subp. 5. **Approved practice.** "Approved practice" means a soil and water conservation practice or wildlife habitat enhancement that may be established on an easement area and is described in the easement program practice specifications.

Subp. 6. ~~Authorized farm corporation.~~ "Authorized farm corporation" has the meaning given in Minnesota Statutes, section ~~500.24~~, subdivision 2.

Subp. 6a. ~~Authorized farm partnership.~~ "Authorized farm partnership" has the meaning given in Minnesota Statutes, section ~~500.24~~, subdivision 2.

Subp. 7. [Repealed, 14 SR 1928]

Subp. 8. [Repealed, 19 SR 550]

Subp. 9. **Conservation agreement.** "Conservation agreement" means a written contract stating the terms and conditions for conveying a conservation easement by the landowner to the state.

Subp. 10. **Conservation easement.** "Conservation easement" has the meaning given for "conservation easement" in Minnesota Statutes, section 84C.01, paragraph (1).

Subp. 10a. ~~Conservation easement handbook.~~ "Conservation easement handbook" means the current edition of the state board's publication containing detailed procedures and guidelines for implementing the conservation easement programs administered by the state board. This publication is subject to periodic change, is available at the state board office and at district offices, and is incorporated herein by reference.

Subp. 10b. **Conservation easement program.** "Conservation easement program" refers to both the RIM reserve program, as defined in subpart 42, and the permanent wetlands preserve program, as defined in subpart 36a.

Subp. 11. **Conservation plan.** "Conservation plan" means a written description and map of the approved practices that must be applied to or that already exist on the easement area.

Subp. 11a. **Cost-shared practice.** "Cost-shared practice" means an approved practice which qualifies for cost-sharing through a conservation easement program administered by the state board.

Subp. 12. [Repealed, 19 SR 550]

Subp. 13. [Repealed, 19 SR 550]

Subp. 14. **District.** "District" means a local soil and water conservation district organized under Minnesota Statutes, chapter 103C.

Subp. 15. **District board.** "District board" means the board of supervisors of a soil and water conservation district as organized under Minnesota Statutes, chapter 103C.

Subp. 16. [Repealed, 19 SR 550]

Subp. 17. **District technical representative.** "District technical representative" means a district employee or other designee assigned by the district who has expertise in the design and application of approved practices.

Subp. 17a. **Drained wetland.** "Drained wetland" means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation sufficient to reduce its natural function ~~render the land suitable for agricultural crop production. The alteration must have occurred before~~

~~December 23, 1985, and must be a legal alteration as determined by the commissioner of natural resources.~~

Subp. 17b. **Easement program practice specifications.** "Easement program practice specifications" means the detailed descriptions of the approved practices that are allowed on lands enrolled in the conservation easement programs. ~~This information is contained in the current edition of the conservation easement handbook, a publication of the state board that is defined in subpart 10a.~~

Subp. 18 [Repealed, 19 SR 550]

Subp. 19. **Family farm.** ~~"Family farm" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.~~

Subp. 20. **Family farm corporation.** ~~"Family farm corporation" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.~~

Subp. 20a. **Family farm partnership.** ~~"Family farm partnership" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.~~

Subp. 20b. **Farmed wetland.** "Farmed wetland" means a wetland, as defined in subpart 48, that has been devoted to agricultural crop production, as defined in subpart 2, since December 23, 1985.

Subp. 21. [Repealed, 19 SR 550]

Subp. 22. [Repealed, 19 SR 550]

Subp. 23. **Food plot.** "Food plot" means an area established for the purpose of providing food for wildlife.

Subp. 24. ~~**Highway windbreak.** "Highway windbreak" means a strip or belt of trees, shrubs, or grass barriers at least six rows deep and within 300 feet of the right-of-way of a highway.~~

Subp. 25. ~~**Hydric soils.** "Hydric soils" means soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. A current list of hydric soils is available at the state board office and the district office, is subject to periodic change, and is incorporated herein by reference.~~

Subp. 26. ~~**Hydrophytic vegetation.** "Hydrophytic vegetation" means macrophytic plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.~~

Subp. 27. **Individual.** "Individual" means a person or legal entity, whether or not a resident of Minnesota.

Subp. 28. ~~**Inherently unproductive.** "Inherently unproductive" means that the soil properties of available water capacity, bulk density, and pH in the uppermost 100 centimeters (39 inches) of a soil are present so that an unfavorable rooting environment exists for agricultural crop production.~~

Subp. 29. **Introduced hayland.** "Introduced hayland" means an area devoted to the production of forage that has been cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the ten years prior to applying for enrollment in a conservation

easement program. These areas must have been harvested by mechanical methods at least two years during the five years prior to applying for enrollment in a conservation easement program.

Subp. 30. **Introduced pasture.** "Introduced pasture" means an area devoted to the production of forage that has been cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the ten years prior to applying for enrollment in a conservation easement program. These areas must have been harvested by grazing at least two years during the five years prior to applying for enrollment in a conservation easement program.

Subp. 31. **Landowner.** "Landowner" means an individual, ~~family farm, family farm partnership, authorized farm partnership, family farm corporation, authorized farm corporation, estate, or testamentary trust,~~ or entity that is not prohibited from owning agricultural land under MS 500.24 and who either owns eligible land or is purchasing eligible land under a contract for deed in Minnesota.

Subp. 31a. **Land with crop history.** "Land with crop history" means land that has produced horticultural, row, or close grown crops or that has been enrolled at a cropland rate in a federal or state conservation program at least two of the five years prior to applying for enrollment in a conservation easement program, or land that meets the definition of introduced hayland in subpart 29, or land that meets the definition of introduced pasture in subpart 30. For the purposes of parts ~~8400.3000~~ to 8400.3930, land with crop history includes acres devoted to "set aside" or "conserving use" for the United States Department of Agriculture programs.

Subp. 32. ~~**Local emergency.** "Local emergency" means an emergency declared under Minnesota Statutes, section 12.29.~~

Subp. 33. **Marginal agricultural land.**

"Marginal agricultural land" means land that is:

- (1) composed of class IIIe, IVe, V, VI, VII, or VIII land as identified in the land capability classification system of the United States Department of Agriculture; or
- (2) similar to land described under clause (1) and identified under a land classification system selected by the board.

~~If the state selects a land classification system as provided by clause (2), the state board will provide districts with a list of soil mapping units indicative of marginal agricultural land. Districts, upon state board approval, may change the list as necessary to reflect local soil characteristics. A current list is available at the state board office and at district offices, is subject to periodic change, and is incorporated herein by reference.~~

Subp. 33a. **Pasture.** "Pasture" means land used for grazing by domestic livestock and land which is not considered land with crop history as defined in subpart 31a.

Subp. 33b. **Pastured hillside.** "Pastured hillside" means land on a hillside that is used for pasture as defined in subpart 33a or used for introduced pasture as defined in subpart 30.

Subp. 34. [Repealed, 19 SR 550]

Subp. 35. [Repealed, 19 SR 550]

Subp. 36. **Perennial cover.** "Perennial cover" means the water area created by restoring a drained wetland or the perennial vegetation established under a conservation easement program, or the perennial vegetation or the water or wetland areas that already exist on the easement area.

Subp. 36a. **Permanent wetlands preserve program.** "Permanent wetlands preserve program" means the program established under Minnesota Statutes, section 103F.516.

Subp. 37. [Repealed, 19 SR 550]

Subp. 38. [Repealed, 19 SR 550]

Subp. 39. [Repealed, 19 SR 550]

Subp. 39a. **Public waters.** "Public waters" means waters as defined in Minnesota Statutes, section 103G.005, subdivision 15, and inventoried under Minnesota Statutes, section 103G.201. A copy of the inventory is available in the district office.

Subp. 39b. **Public waters wetlands.** "Public waters wetlands" means wetlands as defined in Minnesota Statutes, section 103G.005, subdivision 15a.

Subp. 39c. ~~**Replacement wetland.** "Replacement wetland" means a wetland that has been replaced under Minnesota Statutes, section 103G.2242.~~

Subp. 40. ~~**Restorable drained wetland.** "Restorable drained wetland" means a drained wetland as defined in subpart 17a that is practical to restore and for which the state board is able to secure the necessary land rights of adjacent landowners.~~

Subp. 41. [Repealed, 19 SR 550]

Subp. 42. **RIM reserve program.** "RIM reserve program" means the program established in Minnesota Statutes, sections 103F.515 and 103F.525.

Subp. 42a. **Riparian land.** "Riparian land" means land adjacent to public waters, drainage systems, wetlands, or locally designated priority waters identified in a comprehensive local water plan, as defined in Minnesota Statutes, section 103B.3363, subdivision 3.

Subp. 43. **Screening committee.** "Screening committee" means a group established by the district board to assist in implementing the conservation easement programs. The screening committee is chaired by a district board member, or their delegate, and is composed of representatives of private, state, and local organizations or clubs, and local, state, and federal agencies with an interest in the conservation easement programs.

Subp. 43a. **Sensitive groundwater area.** "Sensitive groundwater area" means a geographic area defined by natural features where there is a significant risk of groundwater degradation from activities conducted at or near the land surface. These areas may be identified by mapping or other appropriate methods determined by the commissioner of natural resources and the state board. Wellhead protection areas and land that is adjacent and draining to a sinkhole may be designated as a sensitive groundwater area.

Subp. 44. ~~**Significant potential environmental impact.** "Significant potential environmental impact" means that the use of agricultural land may result in surface water or groundwater quality degradation or deposition of eroded sediments on property of adjacent landowners due to the soil properties of erosion potential, permeability, runoff potential, slope stability, or depth to water table.~~

Subp. 45. **Soil and water conservation practice.** "Soil and water conservation practice" means structural or vegetative practices applied to land for the purposes of controlling soil erosion, sediment, agricultural nutrients or waste, or other water pollutants.

Subp. 46. ~~Soil mapping unit.~~ "Soil mapping unit" means a unit or type of soil or combination of soils shown on a soil survey map.

Subp. 47. [Repealed, 14 SR 1928]

Subp. 47a. **State board.** "State board" means the Board of Water and Soil Resources.

Subp. 48. **Wetland.** "Wetland" means ~~land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, or that periodically does support, a predominance of hydrophytic vegetation~~ wetlands as defined in Minnesota Statutes, section 103G.005, subd. 1a.

Statutory Authority: ~~MS s 40.45;~~ 103F.531

History: 13 SR 1055; 14 SR 1928; 19 SR 550; L 1996 c 462 s 43

Posted: October 4, 2001

- ~~A. the need for soil erosion or sediment control, protection or improvement of water quality, or improvement of fish and wildlife habitat, within a specified geographical area as determined by the state board, or as identified in the annual plan of each district or in any comprehensive local water plans prepared pursuant to Minnesota Statutes, section 103B.231, 103B.255, 103B.311, 103D.401, or 103D.405;~~
- ~~B. the cumulative degree of soil erosion or sediment control, protection or improvement of water quality, or improvement of fish and wildlife habitat likely to be accomplished by the enrollment of selected easement areas; and~~
- ~~C. the expressed interest and readiness of each district board, as well as cooperating groups and agencies, to implement the conservation easement programs.~~

~~The allocated funds may be increased, decreased, or shifted by the state board as necessary to maximize the use of available funds among districts. In selecting land for enrollment in the RIM reserve program, highest priority must be given to permanent conservation easements pursuant to Minnesota Statutes, section 103F.515, subdivision 2, paragraph (f).~~

Statutory Authority: ~~MS s 40.45;~~ 103F.531

History: 13 SR 1055; 14 SR 1928; 19 SR 550

Posted: October 4, 2001

8400.3100 [Repealed, 19 SR 550]

Posted: October 4, 2001

8400.3110 DURATION OF CONSERVATION EASEMENTS.

For purposes of the RIM reserve program, a conservation easement may be permanent or of limited duration. A conservation easement acquired on restorable drained wetlands, replacement wetlands, or land for highway windbreak purposes, must be of permanent duration. A conservation easement of

limited duration may be acquired on other eligible land within a district if it is for a period not less than 20 years and only if the state board has approved enrollment of limited duration conservation easements in that district.

All permanent wetlands preserve program conservation easements must be of permanent duration.

Statutory Authority: *MS s ~~40.45~~; 103F.531*

History: *14 SR 1928; 19 SR 550*

Posted: *October 4, 2001*

8400.3130 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Posted: *July 2, 2009*

8400.3160 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Posted: *July 2, 2009*

8400.3200 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Posted: *July 2, 2009*

8400.3210 DELEGATION OF PROGRAM TO ANOTHER DISTRICT.

A district board may enter into an agreement with other district boards as authorized by Minnesota Statutes, section 103C.231, to delegate to another district board the responsibility for administering any conservation easement program of the state board. Where such delegation has been mutually agreed upon, each district board must so notify all landowners in their respective district and each district must so notify the state board.

Statutory Authority: *MS s 103F.531*

History: *19 SR 550*

Posted: *October 4, 2001*

8400.3230 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Posted: *July 2, 2009*

8400.3260 LAND IN MORE THAN ONE DISTRICT.

If an application involves land in more than one district, the participating districts may jointly delegate to one of the districts the responsibility for review and prioritization of that application. If that application is accepted for enrollment, the affected districts may also jointly delegate to one of the districts the responsibility for completing all of the tasks necessary for conveyance of the conservation easement to the state board.

Statutory Authority: *MS s ~~40.45~~; 103F.531*
History: *13 SR 1055; 19 SR 550*
Posted: *October 4, 2001*

8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW OF APPLICATIONS.

The state board may direct districts to utilize a local screening process or committee to prioritize local project areas or applications. The criteria for screening committee prioritization are as follows:

A. consistency with the purpose and policy of the respective conservation easement program;

~~B. the parcel's relationship to the priorities previously determined in part 8400.3130;~~

~~C.~~ B. the parcel's potential impact on reducing soil erosion and sedimentation, improving water quality, reducing flooding, and enhancing fish and wildlife habitat;

C. compatibility with established priorities of the organizations and agencies participating in the screening process; and

D. highest priority must be given to permanent easements pursuant to Minnesota Statutes, section 103F.515, subdivision 2, paragraph ~~(f)~~ (e).

Statutory Authority: *MS s ~~40.45~~; 103F.531*
History: *13 SR 1055; 19 SR 550*
Posted: *October 4, 2001*

8400.3330 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Posted: *July 2, 2009*

8400.3360 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Posted: *July 2, 2009*

8400.3390 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Posted: *July 2, 2009*

8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.

The district board shall direct its staff or the district technical representative to develop conservation agreements as prescribed by the state board and in a recordable form for all approved applications which incorporate the minimum requirements stated in Minnesota Statutes, section 103F.515, subdivisions 4 and 5. In addition, each conservation agreement must require the landowner to:

A. pay, when due, all taxes and assessments that may be levied against the easement area;

B. remove any existing structures as required by the district board or the state board prior to the conveyance of the conservation easement with all associated costs being the responsibility of the landowner, and not place, erect, or construct any temporary or permanent structures on the easement area;

C. remove any existing hazardous and toxic substances or any pollutants and contaminants prior to the conveyance of the conservation easement with all associated costs being the responsibility of the landowner, and not place such substances, pollutants, or contaminants on the easement area;

D. properly seal all abandoned wells on the easement area prior to the conveyance of the conservation easement, with all associated costs being the responsibility of the landowner; and

E. allow the state board and its employees and agents to enter the easement area for the purposes of inspection and enforcement of the terms and conditions of the conservation easement.

Statutory Authority: *MS s ~~40.45~~; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550*

Posted: *October 4, 2001*

8400.3430 [Repealed, 19 SR 550]

Posted: *October 4, 2001*

8400.3460 TITLE REQUIREMENTS.

The landowner must have good and marketable title that is insurable under a title insurance policy. In addition, the title must not be subject to any prior liens or encumbrances determined to be objectionable by the Attorney General. Objectionable title defects, liens, or encumbrances must be promptly removed or corrected by the landowner prior to easement conveyance.

Statutory Authority: *MS s ~~40.45~~; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550*

Posted: *October 4, 2001*

8400.3500 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Posted: *July 2, 2009*

8400.3530

Subpart 1. [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Subp. 2. [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Subp. 2a. [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Subp. 3. [Repealed, 19 SR 550, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Subp. 4. [Repealed, 19 SR 550, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Posted: July 2, 2009

8400.3560 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Posted: July 2, 2009

8400.3600 RENEWAL AND EXTENSION OF CONSERVATION EASEMENTS.

A. When a conservation easement of limited duration expires, a new conservation agreement and conservation easement for an additional period of not less than 20 years may be acquired by agreement of the state board and the landowner under the rules in force at that time. The state board may adjust payment rates as a result of renewing a conservation agreement and conservation easement after examining the condition of the established cover, conservation practices, and land values.

B. The easement duration may be lengthened through mutual agreement of the current landowner with the state board, in consultation with the commissioners of agriculture and natural resources, if the state board determines that the changes are consistent with the purpose of the conservation easement program. When converting limited duration easements to permanent easements, the payment is the difference between the amount that would be paid per acre for the permanent easement as established for the most recent sign-up period and the amount already paid for the limited duration easement on the area.

Statutory Authority: *MS s ~~40.45~~; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550*

Posted: *October 4, 2001*

8400.3610 ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION EASEMENTS.

The state board may alter, release, or terminate a conservation easement after consultation with the commissioners of agriculture and natural resources. The board may alter, release, or terminate an easement only if the state board determines that the public interests and general welfare are better served by the alteration, release, or termination.

The state board must be provided the following information at least 30 days prior to a state board meeting, before the state board will consider a request to alter, release, or terminate a conservation easement:

- A. a copy of the letter from the landowner to the district board justifying the change and identifying how the public interest and general welfare will be better served;
- B. a letter from the district board recommending either approval or disapproval of the proposed change;
- C. a letter from the Department of Natural Resources ~~area wildlife manager~~ recommending either approval or disapproval of the proposed change; and
- D. other supporting documents, including:

- (1) an aerial photo identifying the requested change;
- (2) a soil survey map of the area;
- (3) cropping history information; and
- (4) other pertinent documentation that will support the request.

The state board reserves the right to require special provisions to ensure at least equal resource value as a condition of approving the request. The state board must be compensated by the landowner for all damages and loss of benefits to the conservation easement and the state board may also require reimbursement for administrative expenses and costs incurred in the alteration, release, or termination of a conservation easement.

Statutory Authority: *MS s ~~40.45~~; 103F.531*

History: *14 SR 1928; 19 SR 550*

Posted: *October 4, 2001*

8400.3630 APPROVED PRACTICES.

Subpart 1. **Criteria.** Approved practices must have as their primary purpose the control of soil erosion or sedimentation, protection or improvement of water quality, reduction of flooding, or enhancement of fish and wildlife habitat. Approved practices ~~are~~ may be further specified in the easement program policies or practice specifications. Practices that do not qualify as approved practices include, but are not limited to, Christmas tree plantations and fruit orchards. Food plots are not eligible for conservation easement program cost-sharing, but are considered an approved practice and, therefore, are allowed on enrolled acres ~~if they are included~~ as specified in the easement conservation plan.

Subp. 2. **Establishment of approved practices.** A landowner is responsible for the establishment of all approved practices on the easement area in accordance with the easement program practice specifications. Establishment of approved practices must be monitored by the district board or its delegate to ensure compliance with the conservation plan and the conservation easement. Upon establishment or partial completion of an approved practice, a district technical representative shall certify whether or not the approved practice, in whole or part, has been satisfactorily performed.

Statutory Authority: *MS s ~~40.45~~; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550*

Posted: *October 4, 2001*

8400.3660 [Repealed, 19 SR 550]

Posted: *October 4, 2001*

8400.3700 COST-SHARED PRACTICES.

Subpart 1. **Approved practices eligible for cost-sharing.** The state board shall determine which approved practices are eligible for conservation easement program cost-sharing, consistent with the

criteria as described in part 8400.3630, subpart 1, ~~and consistent with the payment limits in Minnesota Statutes, section 103F.515, subdivision 6, paragraph (a), clauses (1) and (2).~~

Subp. 2. Eligible costs for cost-shared practices.

A. Upon satisfactory performance under part 8400.3630, subpart 2, the landowner shall present receipts or invoices to the district board, or their delegate, of the costs incurred in the installation of the cost-shared practice. The district board shall review the receipts or invoices to determine the costs eligible for conservation easement program payment. If the district board determines that the costs requested for reimbursement are reasonable and necessary, it shall recommend payment to the landowner by submitting certification of satisfactory performance and providing documentation of reimbursable practice costs to the state board on forms provided by the state board. If the district board determines that certain costs requested for reimbursement are not eligible or reasonable, it shall notify the landowner in writing of this determination. The landowner may request reconsideration of this determination by the district board within 30 days of receipt of the determination. If additional costs are determined to be eligible and reasonable, the district board shall then recommend payment for the approved amount. The state board reserves the right to approve whether costs requested for reimbursement are eligible and reasonable.

B. Eligible costs for approved practices are limited to those prescribed by the State Board as allowed in Minnesota Statutes, section 103F.515, subdivision 6, paragraph (a), clauses (1) and (2), and to the total state funds encumbered for the cost-shared practices designated in the conservation plan. ~~The amount of encumbered funds may be increased, within the statutory limits, after a landowner request, which has been properly executed on forms prescribed by the state board, has been approved by the state board.~~

C. The state board reserves the right to approve and provide funding for cost-shared practices directly or through its authorized agents.

Subp. 3. Payment for in-kind services. In-kind services provided by the landowner including, but not limited to, earthwork, seedbed preparation, and seeding, may be credited to the landowner's share of the total cost of establishing the cost-shared practice. The district board shall credit only those costs it determines to be practical and reasonable and to approve receipts or invoices directly or through its authorized agents delegate.

Subp. 4. Funds from other sources. Conservation easement program cost-sharing funds may be augmented by funds from other agencies, organizations, or individuals. ~~Securing these funds is the responsibility of the landowner.~~

Statutory Authority: *MS s 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550*

Posted: *October 4, 2001*

8400.3730 FAILURE OF APPROVED PRACTICES.

Subpart 1. Cost-shared practices. A landowner is not in violation of the conservation easement if the failure, in whole or part, of a cost-shared practice was caused by reasons beyond the landowner's control such as extreme weather conditions. In these instances, the district board may recommend to the state board that conservation easement program cost-sharing funds be encumbered for reestablishment of the cost-shared practice. The encumbrance must comply with the limits ~~in Minnesota Statutes, section~~

~~103F.515, subdivision 6, paragraph (a), clauses (1) and (2) prescribed by the State Board.~~ In no case may a district board authorize conservation easement program financial assistance to a landowner for the reestablishment of cost-shared practices that were removed or altered by the landowner, or that have failed due to improper maintenance during the term of the conservation easement.

Subp. 2. **All other approved practices.** A landowner is not in violation of the conservation easement if the failure of approved practices was caused by reasons beyond the landowner's control.

Statutory Authority: ~~MS s 40.45;~~ 103F.531

History: 13 SR 1055; 14 SR 1928; 19 SR 550

Posted: October 4, 2001

8400.3760 [Repealed, 14 SR 1928; 19 SR 550]

Posted: October 4, 2001

8400.3800 OPERATION AND MAINTENANCE.

A landowner is responsible for the operation and maintenance of approved practices designated in the conservation plan.

Statutory Authority: ~~MS s 40.45;~~ 103F.531

History: 13 SR 1055; 19 SR 550

Posted: October 4, 2001

8400.3830 VIOLATIONS AND ENFORCEMENT.

Subpart 1. **District board action.** The district board may take such measures as are necessary to ensure landowner compliance with the conservation agreement, conservation easement, and conservation plan. If the district board is unsuccessful at obtaining landowner compliance, the district board shall notify the state board of the violation and may recommend appropriate measures to be taken to correct violations.

Subp. 2. **State board action.** Upon notification ~~by the district board~~ or discovery of a violation of a conservation agreement, conservation easement, or conservation plan, the state board shall take action to resolve the violation.

A landowner who violates the terms of a conservation agreement, conservation easement, or conservation plan under this chapter, or induces, assists, or allows another to do so, is liable to the state for treble damages if the violation is willful or double damages if the violation is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater.

If the state board is not successful in resolving the violation, it may request the state attorney general to commence legal action to enforce the conservation agreement, conservation easement, or conservation plan.

Subp. 3. **Attorney general action.** Upon request by the state board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney fees, and any other appropriate relief to enforce Minnesota Statutes, sections 103F.501 to 103F.531 in district court in the

county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

Conservation easements remain in effect even if maintenance violations have occurred.

Statutory Authority: *MS s ~~40.45~~; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550*

Posted: *October 4, 2001*

8400.3860 [Repealed, 19 SR 550]

Posted: *October 4, 2001*

~~8400.3870 SUPPLEMENTAL PAYMENTS ON FEDERAL AND STATE PROGRAMS.~~

~~The state board may supplement payments made under federal or other state land retirement programs to the extent of available appropriations other than bond proceeds. The payments must be used to establish perennial cover on land or to supplement payments for land enrolled in land retirement programs approved by the state board.~~

Statutory Authority: *MS s 103F.531*

History: *19 SR 550*

Posted: *October 4, 2001*

8400.3900 [Repealed, 19 SR 550]

Posted: *October 4, 2001*

8400.3930 RECONSIDERATION AND APPEAL.

Subpart 1. Reconsideration by district board. An affected landowner may request the district board to reconsider its:

A. recommendation or determination regarding that landowner's application for enrollment in a conservation easement program;

B. recommendation or determination to cancel that landowner's conservation agreement;

C. determination regarding that landowner's eligible and allowable costs to be reimbursed by the state board;

D. request to that landowner to correct any alleged noncompliant conditions regarding that landowner's enrolled easement area; or

E. recommendation to disapprove that landowner's request to change an enrolled easement area.

Subp. 2. Time for reconsideration by district board. A landowner requesting reconsideration under subpart 1 shall mail a written request to the district board within 15 days of receipt of notice of the

district board's determination or recommendation of the matters specified in subpart 1. The request for reconsideration shall include the specific reasons for the request and evidence to support the landowner's claims. The district board shall notify the landowner in writing of its final recommendation and the reasons for the recommendation within 60 days of receipt of the landowner's request for reconsideration.

Subp. 3. **Appeal to state board.** An affected landowner may appeal to the state board from a final recommendation made by the district board pursuant to subpart 2. The landowner shall mail a written appeal to the state board within 15 days after receipt of the district board's final recommendation. The appeal shall include the specific reasons for the request and evidence to support the landowner's claims. The state board shall notify in writing the landowner and the district board of its final decision and the reasons for the decision within 60 days of receipt of the landowner's appeal.

Subp. 4. [Repealed, 14 SR 1928]

Statutory Authority: *MS s ~~40.45~~; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550*

Posted: *October 4, 2001*

DRAFT

**STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES**

**In the Matter of the Proposed Adoption of Amendments to Rules Governing the Cost-share Program
and the Reinvest in Minnesota Reserve Program, Minnesota Rules Chapter 8400.0050 to 8400.3930.**

STATEMENT OF NEED AND REASONABLENESS

October 9, 2012

PURPOSE

The principal purpose of this rulemaking is to conform the rule to statutory amendments made to Minnesota Statutes 103C and 103F in 2009. Additional goals are to position the Cost-share and RIM Reserve Programs for increased direction via Board of Water and Soil Resources (BWSR) Board policies and to reduce the administrative burden of these programs.

INTRODUCTION

Agency Background: BWSR is the state's administrative agency for 90 soil and water conservation districts (SWCD), 46 watershed districts, 18 metropolitan watershed management organizations, and 80 county water managers. The agency's purpose, working through local government, is to protect and enhance the state's soil and water resources by implementing the state's soil and water conservation policy, comprehensive local water management, and the Wetland Conservation Act as it relates to the 41.7 million acres of private lands in Minnesota. The BWSR Board consists of 20 members, including local government representatives that deliver BWSR programs, state agencies, and citizens.

Rulemaking Background: BWSR administers several natural resources conservation programs through SWCDs. The proposed amendments to this rule (8400.0050 to 8400.3930) govern the Erosion Control and Water Management (commonly referred to as the State Conservation Cost-Share Program) and Reinvest in Minnesota (RIM) Reserve Programs. Both of these programs are voluntary, non-regulatory programs. This Statement of Need and Reasonableness will discuss the proposed rules changes as they relate to each of these programs.

The Cost-share Program provides state funds to SWCDs so they can provide technical and financial assistance to land occupiers to install conservation practices that reduce erosion, control sedimentation, improve and protect water quality or address water quantity problems due to altered hydrology on the lands they own or manage. Under the RIM Reserve Program, BWSR provides funds to SWCDs so they can provide technical and financial assistance to land occupiers to acquire conservation easements on certain marginal agricultural lands and wetlands.

The scope of this rulemaking is to improve the application of these programs by:

1. Incorporating statutory changes that have occurred in the RIM Reserve Law (103F.505 to 103F.531);

2. Reflecting statutory amendments enacted in 2009, including a directive to adopt Cost-share Program Policies (103C.501);
3. Streamlining the administration to increase efficiencies for both SWCDs and BWSR;
4. Respond to evolving resource management strategies by accommodating greater use of other Best Management Practices (BMPs) ; and
5. Improving the clarity of the permanent rule.

The Cost-share rules were initially promulgated in 1977, with the most recent revision occurring in 2003. The proposed revisions make the rule consistent with the amended statute.

The RIM rules were initially promulgated in 1994. The proposed revisions make the rule consistent with the amended statute.

ALTERNATIVE FORMAT.

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact:

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STATUTORY AUTHORITY.

Minnesota Statutes 103C.501 authorizes the BWSR, through districts, to enter into cost-share contracts with landowners for erosion control and water management. Minnesota Statutes 103C.501, Subd. 6 authorizes the board to adopt administrative rules for the Cost-share Program.

Minnesota Statutes 103F.501 to 103F.531 authorizes BWSR to implement a program to acquire conservation easements to restore certain marginal agricultural lands and protect environmentally sensitive areas to enhance soil and water quality, minimize damage to flood prone areas, sequester carbon, and support native plant, fish, and wildlife habitats. Minnesota Statutes 103F.531 authorizes the board to adopt administrative rules for the RIM Reserve Program.

In addition, the board has general rule making authority for carrying out all its programs pursuant to Minnesota Statutes, section 103B.101, subdivision 7.

REGULATORY ANALYSIS

Determination of the Classes of Persons affected by the Proposed Rules.

No class of person is required to comply with either the Cost-share or RIM Programs, as they are not regulatory, but voluntary land and water conservation programs. The proposed rule will directly affect SWCDs who receive funds under and implement the Cost-share and RIM programs. The work of SWCDs under these programs entails significant interaction with landowners to market and implement conservation practices and/or conservation easements. In addition, landowners that choose to participate in either program will be affected. However, the changes are intended to implement statutory changes, reduce administrative costs and provide increased implementation flexibility.

These rule changes should result in result in increased efficiency and effectiveness in achieving program goals.

Determination of Alternative, Less Costly or Less Intrusive Methods for Achieving the Purpose of the Proposed Rules.

There is no known alternative to the proposed rule that is less costly or less intrusive. The current and proposed rule is necessary to implement statute. An alternative to the proposed rule would be to develop a rule that details all requirements for implementing these programs. However, this would run counter to legislative direction that requires BWSR to adopt policies to implement these programs. Furthermore, a detailed rule would reduce flexibility in program implementation that is possible through BWSR Board adopted policies.

Probable Costs of Complying with the Proposed Rules.

The rule as proposed will not increase the state's costs, costs borne by SWCDs, and costs borne by landowners. On the contrary, the rule is expected to reduce the costs of SWCDs and the state due to streamlined administrative processes. The rule should have no effect on landowners.

Probable Costs or Consequences of not Adopting the Proposed Rules.

The consequences of not adopting the proposed rule amendments would be a rule that does not comply with statute. These inconsistencies would increase costs and negatively affect conservation opportunities due to not implementing the flexibility as required by statute.

Assessment of Differences between the Proposed Rules and Existing Federal Regulations.

As stated previously, neither the Cost-share nor the RIM Programs are regulatory and have no direct connection to any federal regulatory program. However, both programs have corollary programs with those implemented by federal agencies (Environmental Quality Incentives Program and Wetland Reserve Program) and are often closely coordinated at the state and local government levels. Partnerships and coordinated implementation are key elements of the 2007 BWSR Board Strategic Plan. The proposed rule will allow increased reliance on BWSR Board adopted policy and this flexibility will help ensure these programs continue to be closely coordinated.

Description of How the Agency Considered and Implemented the Policy to Adopt Rules that Emphasize Superior Achievement in Meeting the Agency's Regulatory Objectives and Maximum Flexibility for the Regulated Part and Agency in Meeting these Goals.

The proposed rule amendments have two objectives: (1) consistency with statute, and (2) implement the statutory directive to adopt policies and the programmatic flexibility that these policies will bring. This flexibility will assist BWSR in meeting objectives of a continued focus on a federal, state, and local conservation partnership, an improved ability to coordinate these programs with the dedicated Constitutional Clean Water and Outdoor Heritage funds, and the ability to adjust program priorities and administrative requirements to meet future needs.

ADDITIONAL NOTICE.

A. The Request for Comments was published on June 21, 2010 and was distributed by email to approximately 200 individuals with SWCDs and other local governments that have been engaged in these programs.

B. The rule development process was largely a product of BWSR staff. However, at several stages in this process, agency staff consulted with SWCDs to receive input on rule issues. In addition, the draft rule and statutorily required Board Cost-share Program Policy were posted on the BWSR website on November 5, 2010. Approximately 200 individuals were notified by email of the availability of these documents and were encouraged to provide comments.

Three comments were received in response to these two efforts to inform and encourage input on the proposed rule.

C. BWSR intends to send a copy of the Notice of Intent to Adopt Rules Without a Public Hearing to:

- All individuals who have registered with BWSR for the purpose of receiving notice of rule proceedings as required by Minn. Stat. 14.14, subd. 1a;
- All SWCDs, all watershed districts, all watershed management organizations, and all county water managers;
- All individuals and representatives of associations that BWSR has on file as interested and affected parties;
- Minn. Stat. 14.116 requires a copy of the notice, the rules, and SONAR be sent to the chairs and ranking minority members of the committees with jurisdiction over the subject matter of the proposed rules. This statute also states that if the mailing of the notice is within two years of the effective date of the law granting rulemaking authority that the agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting legislators who were chief authors of the bill granting the rulemaking authority. Under this statutory directive, the following legislators will be sent the above referenced documents: the chairs and ranking minority members of (1) the House Environment, Natural Resources and Energy Policy and Finance Committee; (2) the Senate Environment and Natural Resources Committee; and (3) the chief authors of legislation amending the Cost-share and RIM statute, Representative David Dill and Senator Satveer Chaudhary.

- In addition, a copy of the notice, proposed rule, and draft SONAR will be posted on the BWSR website.

Because of the limited impact of the proposed rule amendments and the broad distribution of the Request for Comments, the broad distribution of the Notice of Intent to Adopt Without a Public Hearing, and as copies of the proposed rule are available on the BWSR website, BWSR believes a thorough effort to reach significantly affected persons has been accomplished.

NOTIFICATION TO THE COMMISSIONER OF AGRICULTURE.

Minn. Stat. 14.111 requires that before an agency adopts or repeals rules that affect farming operations, the agency must provide a copy of the proposed rule to the Commissioner of Agriculture no later than 30 days prior to publication of the proposed rule in the State Register. Both the Cost-share and RIM Programs are often implemented on agricultural lands and thereby affect agricultural operations. However, these programs are voluntary so they will have a minimal impact on agriculture.

Based on this assessment, the Commissioner of Agriculture was sent a copy of the proposed rule on March 25, 2011. This notification, while required by statute, is in addition to the participation of the Department of Agriculture on the BWSR Board.

CONSULT WITH MINNESOTA MANAGEMENT AND BUDGET ON LOCAL GOVERNMENT IMPACT.

As required by Minn. Stat. 14.131, BWSR has consulted with the Commissioner of Minnesota Management and Budget to help evaluate the fiscal impact of the proposed rule. We did this on March 29, 2011 by sending to the Commissioner of Minnesota Management and Budget copies of the draft rule amendments and SONAR.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION.

Minn. Stat., section 14.128 requires determining whether a local government will have to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. As stated previously, the Cost-share and RIM Programs are not regulatory and local governments will not be required to adopt or amend an ordinance or other regulation as a result of the proposed rule amendments.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY.

The Cost-share and RIM Programs are implemented by SWCDs based on voluntary participation by landowners. Cities are not affected by these programs and therefore will not incur any additional costs. Similarly, small businesses will not incur additional costs under these rules. Most projects under these programs are implemented through SWCDs contracting with small businesses. These contractual relationships will not be affected by the proposed rule amendments.

RULE BY RULE ANALYSIS

(citations based on the Proposed Rule as approved by the Revisor of Statutes)

Overview.

The rule amendments largely consist of non-substantive changes that are driven by the following:

- Improving the clarity of the rule by simplifying, updating and re-organizing the language;
- Presenting rule provisions based on local or state responsibility;
- Deleting definitions no longer used in the rule;
- Deleting provisions which will be addressed via statutorily required BWSR Board adopted policy; and
- Updating statutory and rule references.

The requirement for the Board to adopt a program policy warrants further discussion. The process by which policies are generated begins with staff developing a proposal, usually in consultation with affected interests, which is reviewed by a Board Committee, before going to the Board for consideration. Meetings of Board Committees and the Board are public meetings and notice is provided to numerous agencies, organizations, and interested individuals, including the Minnesota Association of Soil and Water Conservation Districts. Also, three Board members are SWCD supervisors.

An important goal of the Cost-share Program Policy will be to make this program consistent with other BWSR grant programs, most significantly the Clean Water Fund programs. Increased consistency and uniformity of requirements and procedures will enable these programs to work together and reduce SWCD and BWSR administrative costs.

The Cost-share Program Policy will be considered by the Board at the same meeting as the rule. The Policy includes the following:

- Purpose
- Eligible Activities
- Technical and Administrative Components
- Cost-share Rates
- Technical Expertise
- Expenditure of Funds on Practices and Contracts
- Practice Sign-off and Payment
- Post-Construction and Follow-Up Activities
- District Reporting Requirements
- BWSR Program Monitoring, Closeout, and Penalty Procedures
- Conservation Districts Cost-share Program Policy

The 2009 amendments to the RIM statute authorize but do not require the Board to adopt a program policy. BWSR will consider adopting a RIM policy in the future based on program needs.

8400.0050 PURPOSE.

Revisions to this part are intended to ensure the rule is consistent with statute and to change the title of the program to "Land and Water Treatment Program" which is a more accurate statement of the purposes of the program.

8400.0060 AUTHORITY.

This part is moved from its current location of 8420.0200, with a minor rule reference change, as the statement of the statutory authority of the Board to develop the cost-share program should be one of the first provisions of the rule.

8400.0100 DEFINITIONS.

The following definitions are deleted as they are no longer used in the rule; some of which will be considered for use in implementing the required program policy:

Subp 2a. **Administrative Guidelines;**

Subp. 4. **Approved practice;**

Subp. 10a. **Conservation district technical representative;**

Subp. 14b. **Farm Service Agency;**

Subp. 15. **Field Office Technical Guide;**

Subp. 16. **Group spokesperson;**

Subp. 16a. **High priority erosion problems;**

Subp. 16b. **High priority erosion problems;**

Subp. 18a. **Landowner;**

Subp. 18b. **Natural Resource Conservation Service;**

Subp. 19a. **Other recognized technical practices;**

Subp. 20a. **Protected waters;**

Subp. 20b. **Registered professional engineer;**

Subp. 20d. **Sinkhole;**

Subp. 22a. **Special project;**

Subp. 25. **T;**

Subp. 26. **2 x T; and**

Subp. 27. **Technical approval authority.**

Subp. 3. **Annual work plan.** This definition is modified to: (1) delete references to obsolete documents, (2) rely on the development of a policy as required by statute, and (3) be consistent with the RIM Reserve portion of this chapter.

Subp. 8. **Comprehensive Plan.** This definition is modified to delete references to obsolete documents and for this definition rely on the development of a policy as required by statute.

Subp. 9. **Conservation district** and Subp. 10 **Conservation district board** have been modified to be consistent with the RIM Reserve portion of this chapter (8420.3030, Subps. 14 and 15).

Subp. 18. **Land occupier.** This definition has been modified to be consistent with the remainder of the proposed rule amendments.

8400.0200 AUTHORITY.

This part is moved from its current location to immediately precede the definitions as the statement of the statutory authority of the Board to develop the Cost-share Program should be one of the first provisions of the rule.

8400.0250 PROGRAM POLICY.

This is a new part that implements the 2009 statutory amendment in Minn. Stat. 103C.501, subd. 6 that requires the Board to adopt policies.

8400.0300 APPROVED CONSERVATION PRACTICES.

The title of this part is revised to specify the kind of practices that are allowed under this program.

Subp. 1 Approved practices. This subpart is deleted as the Board will address approved practices in the required policy. Including a practice list or practice categories in policy will be a flexible approach to ensuring the Cost-share program meets the needs of SWCDs and maximizes conservation opportunities with Legislatively appropriated funding.

Subp. 2 Criteria for approved conservation practices. The revisions to this subpart are to delete redundant language, such as item A which is already addressed in 8400.0050. The objectives of approved practices are moved from subp. 3 to item A for a more logical rule organization. In addition, new objectives are added to the approved practice categories to cover the types of projects that should be eligible for the Cost-share Program and to ensure consistency with 8400.0050.

The deletion in item B allows the effective life of projects to be addressed in the Board policy. Moving this issue to policy will allow a more flexible approach to project effective life and enable different effective life terms based on the type of project. This is important as different project types have different water quality and soil erosion benefits, different costs, and different expected life spans.

The new language in item B addressing habitat practices recognizes that an important secondary benefit of conservation practices is wildlife habitat, and that the program needs to include habitat practices under the limited, specified conditions in the proposed rule.

Language revisions to items C and D are for clarity and consistency within the rule.

8400.0500 MAXIMUM COST-SHARE RATES.

The language revisions in this part are for clarity and consistency within the rule. The last sentence is deleted to remove a disincentive to seek federal funds to implement projects.

8400.0550 RECORDING CONSERVATION PRACTICES

This part operates in concert with 8400.1650. The revisions improve clarity and flexibility for the Board to require recording conservation practices on property titles when it is determined to be necessary to ensure maintenance of the conservation practice. As an enforceable provision it is necessary to be included in the rule.

8400.0600 STATE BOARD ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS

Subp. 1. **Comprehensive Plan.** This subpart is deleted as it is redundant with Minn. Stat. 103C.501, subd. 2.

Subp. 3. **Review criteria.** This subpart is deleted from rule and review criteria and will be addressed in the required program policy. As appropriated funds have been reduced by the Legislature, the advent of the Clean Water Fund, and changing conservation needs all point to an improved ability to meet locally identified needs of SWCDs through Board adopted policy.

Revisions to subparts 4 and 5 are to provide administrative flexibility in program administration and to improve clarity and ensure consistency with statute. The deleted language at the end of subpart 4 is identical to statute and is unnecessary in the rule. However, this language has been included in the proposed policy so that is combined with all requirements that govern how BWSR allocates funds to districts, including biennial appropriations that often provide directives that differ from those in 103C.501.

8400.0700 PROGRAM REPORTING AND MONITORING

This part is deleted as it is, in part, redundant with part 8400.1900 and may be included in the required program policy.

8400.0800 APPLICATION FOR FUNDS BY DISTRICTS

This part is deleted as it is redundant with part 8400.0600.

8400.0900 CONSERVATION DISTRICT ADMINISTRATION OF PROGRAM FUNDS

Subp. 1. **General.** Revisions to this subpart are for clarity, to ensure consistency with the statute, and delete rule requirements that will be addressed in the required program policy.

Subp. 2. **Maximum cost-share rate.** A portion of this subpart is deleted which portion will be addressed in the required program policy. The current rate of 75 percent is not in statute, and flexibility that is possible through policy will increase the ability to coordinate funding for important conservation practices with other state and federal programs. Other factors discussed in this subpart are either obsolete or are not intended elements of future program implementation.

Subp. 4. **Criteria for district board review.** This is a new subpart that largely consists of the current part 8400.1300 which is relocated to be in a more logical sequence of SWCD responsibility under the Cost-share Program. Language changes improve clarity and administrative flexibility for SWCDs.

Subp. 5. **Entering into a contract.** This a new subpart that consists of language relocated from the current part 8400.1400, sub. 1.

8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS

This part is deleted as it is redundant with 8400.0900, subp. 3.

8400.1100 GROUP PROJECTS

This part is deleted as it will be included in the required program policy.

8400.1200 COOPERATIVE AND JOINT PROJECTS BY DISTRICTS

This part is deleted as it will be included in the required program policy.

8400.1250 TECHNICAL ASSESSMENT AND COST ESTIMATE DETERMINATION

This part is deleted as it will be included in the required program policy.

8400.1300 CRITERIA FOR CONSERVATION DISTRICT BOARD REVIEW

This part has been largely moved to 8400.0900 to be in a more logical sequence of SWCD responsibility under the Cost-share Program. In addition, some parts are redundant with 8400.0300.

8400.1400 CONSERVATION DISTRICT APPROVAL

This part is deleted as portions have been relocated to 8400.0900, subp. 4 and other portions will be included in the required program policy.

8400.1405 PROJECT DEADLINES AND PARTIAL PAYMENT

This part is deleted as it will be included in the required program policy.

8400.1460 RETURN OF ALLOCATED FUNDS

This part is deleted as it will be included in the required program policy.

8400.1500 CONSERVATION DISTRICTS

This part is deleted as it will be included in the required program policy.

8400.1600 EXECUTING THE COST-SHARE CONTRACT

This part is deleted as it will be included in the required program policy.

8400.1650 RECORDING CONSERVATION PRACTICES

This part operates in concert with 8400.0550 (Recording Conservation Practices). The revisions improve clarity and flexibility for SWCDs to require recording conservation practices on property titles when it is determined to be necessary to ensure maintenance of the practice. As an enforceable provision it is necessary that this be included in the rule. In addition, the \$50,000 threshold that is deleted in the rule is proposed to be included in the proposed policy. Including this threshold in policy will allow flexibility to address future situations.

8400.1700 MAINTENANCE

The revisions to this part improve clarity, and consistency with Minn. Stat. 103C.501, subd. 5(b).

8400.1750 PRACTICE SITE INSPECTIONS

The revisions to this part add administrative flexibility and deletes provisions that will be addressed under the required program policy.

8400.1800 APPEALS

This part has been modified to be consistent with the RIM Reserve portion of this chapter. The changes eliminate portions of the appeals process that has never been used in this program, and adds new processes that are consistent with other conflict resolution processes administered by BWSR. These changes provide a clear and understandable process for addressing appeals made to BWSR under the Cost-share Program.

8400.1900 REPORTS TO THE STATE BOARD

The revisions to this part ensure consistency with changes made to 8400.0700 and the RIM Reserve portion of this chapter.

8400.2900 District Rates.

This part has been deleted as it is redundant with 8400.0900, subpart 2.

8400.3000 AUTHORITY

This subpart is revised to be consistent with Minn. Stat. 103F.505 which was amended in 2009. The last sentence in this part is added to provide BWSR with additional flexibility in administering the RIM program and to address increased diversity of program funding and program partners that has occurred in recent years, and is expected to continue as the implementation of the Clean Water, Land and Legacy Constitutional Amendment when a district either does not exist in a part of the state or a district board has opted to not implement the program.

8400.3030 DEFINITIONS

The following definitions are deleted as they are no longer used in the rule:

- Subp. 6. Authorized farm corporation.
- Subp. 6a. Authorized farm partnership.
- Subp. 10a. Conservation Easement Handbook.
- Subp. 19. Family farm.
- Subp. 20. Family farm corporation.
- Subp. 20a. Family farm partnership.
- Subp. 24. Highway windbreak.
- Subp. 25. Hydric soils.
- Subp. 26. Hydrophytic Vegetation.
- Subp. 28. Inherently unproductive.
- Subp. 32. Local emergency.
- Subp. 39c. Replacement wetland.
- Subp. 40. Restorable drained wetland.
- Subp. 44. Significant potential environmental impact.
- Subp. 46. Soil mapping unit.

The following definitions are changed to be consistent with Minn. Stat. 103F.511:

- Subp. 17a. Drained wetland.
- Subp. 17b. Easement program practice specifications.
- Subp. 31. Landowner.

Subp. 42. **RIM reserve program.**

Subp. 42a. **Riparian land.**

Subp. 43. **Screening committee.**

Subparts 14 **District** and 15 **District board** are modified to specify the statute under which soil and water conservation districts are organized.

Subp. 33. **Marginal agricultural land** is modified to delete language that allows the Board to adopt land capability systems that are different than those employed by the United States Department of Agriculture. This flexibility has not been used and will not be used in the future due to the close working relationship that exists between the Board and the United States Department of Agriculture.

Subp. 45. **Soil and water conservation practice** has been modified to acknowledge that the practices included in this definition are intended to address agricultural nutrients as well as agricultural waste.

The definition in Subpart 48 **Wetland** was changed to be consistent with Minn. Stat. 103G.005, subd. 19a. This change will ensure improved application consistent with other environmental management programs.

8400.3060 CRITERIA FOR ALLOCATION OF FUNDS

This part is proposed to be deleted as funds are not currently, nor are they expected to be generally available for annual allocation as currently described in this part. Funds are allocated to SWCDs for specific activities associated with inspecting existing easements and for assistance in acquiring and restoring new easements.

8400.3130 LOCAL PRIORITY SETTING

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3160 CRITERIA FOR ELIGIBLE LAND

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3200 MAXIMUM ENROLLMENT

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3230 APPLICATION BY LANDOWNERS

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW OF APPLICATIONS

This part has been revised to allow BWSR to utilize local district screening committees to help prioritize local project areas or applications to assist in making funding decisions. The new language makes the use of screening committees optional as some program sign-ups may have continuous, non-competitive sign-up periods where ranking of applications is unnecessary. The criteria have also been modified to add reduction of flooding consistent with statute.

Item B is deleted as it refers to section 8400.3130 which was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52. Item D is deleted as it is not a criterion, but reflects issues that would prevent the State from acquiring an easement.

8400.3330 CRITERIA FOR DISTRICT BOARD REVIEW

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3360 DISTRICT ACTION ON APPLICATIONS

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3390 EASEMENT ACQUISITION PROCEDURES

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3500 EASEMENT CONVEYANCE

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3530 EASEMENT PAYMENT RATES

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3560 PAYMENT SCHEDULE

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3610 ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION EASEMENTS

The deletion in item C recognizes that a letter regarding a change to an easement as described in this part is still required from the Department of Natural Resources, but may not originate with the area wildlife manager.

8400.3630 APPROVED PRACTICES

This part has been modified to add reduction of flooding consistent with statute. Additional changes are for clarity, to provide districts with flexibility, and to address items for a potential future Board policy.

8400.3700 COST-SHARED PRACTICES

Subp. 1. **Approved practices eligible for cost-sharing.** This subpart is revised to be consistent with Minn. Stat. 103F.515, subd. 6. This statute was amended in 2009 to eliminate references to payment limits.

Subp. 2. **Eligible costs for cost-sharing practices.** This subpart is revised to be consistent with Minn. Stat. 103F.515, subd. 6 and to allow district boards to delegate review of receipts and invoices. In addition, the Board is authorized by Minn. Stat. 103F.531 to adopt policy to implement the RIM Reserve program, and this rule part refers the establishment of eligible costs for approved practices to a potential future Board policy.

Item C and subpart 3 (~~Payment for in-kind services~~) has been amended to provide BWSR with additional flexibility in administering the RIM program and to address increased diversity of program funding and program partners that has occurred in recent years, and is expected to continue as the implementation of the Clean Water, Land and Legacy Constitutional Amendment when a district either does not exist in a part of the state or a district board has opted to not implement the program.

Subp. 3 Payment for in-kind services has been amended to provide districts with additional flexibility in administering the RIM program.

Subp. 4. **Funds from other sources.** The last sentence is deleted as securing additional funds is often conducted by the SWCD as well as the SWCD, which is contrary to the language of this sentence.

8400.3730 FAILURE OF APPROVED PRACTICES

Subp. 1. **Cost-shared practices.** This subpart is revised to eliminate the reference to payment limits to be consistent with Minn. Stat. 103F.515 subd. 6, as this statute was amended in 2009. In addition, the Board is authorized by Minn. Stat. 103F.531 to adopt policy to implement the RIM Reserve program, and this rule part refers the establishment of encumbrances to a potential future Board policy.

8400.3830 VIOLATIONS AND ENFORCEMENT

Subp. 2. **State board action.** The proposed changes to this subpart are to reflect that BWSR may discover a landowner violation, and that action may be taken by BWSR accordingly.

8400.3870 SUPPLEMENTAL PAYMENTS ON FEDERAL AND STATE PROGRAMS

This rule provision is deleted as it unnecessarily addresses a discretionary authority of the Board.



Erosion Control and Water Management Program Policy

(commonly known as the State Cost Share Program)

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1.0 Purpose

The Erosion Control and Water Management Program, commonly known as the State Cost Share Program, was created through Minnesota Statutes, §103C.501 to provide funds to Soil and Water Conservation Districts (Districts) to share the cost of conservation practices for erosion control, sedimentation control, or water quality improvements that are designed to protect and improve soil and water resources. The purpose of this policy is to provide clear expectations for the implementation of funds appropriated to BWSR associated with the Erosion Control and Water Management Program.

District board and staff are responsible for the administration and decisions concerning the local use of these funds in accordance with: Minnesota Statutes, chapter 103C.501; Minnesota Administrative Rules, chapter 8400; BWSR policies; and all other applicable laws. BWSR will use grant agreements as contracts for assurance of deliverables and compliance. Willful disregard of relevant statutes, rules, and policies may lead to imposition of financial penalties on the grant recipient.

Funds are allocated **by BWSR based** on the following minimum criteria to districts that have fully complied with all program rules and policies:

- Extent of high priority erosion or water quality problems in the district, as indicated in the district comprehensive and annual plans **or their equivalent**.
- Priorities for the control of soil erosion or water quality problems as established by the BWSR.
- Historic success of the district in applying conservation practices.

- Ability of the district to expend the funds in a timely manner.
- Legislative appropriation.

BWSR will allocate at least 70 percent of the cost-sharing funds available to districts in the form of grants for conservation practices addressing high priority erosion, sedimentation, or water quality problems. The remaining cost-share funds may be allocated by the board to districts for conservation practices for lower priority erosion, sedimentation, or water quality problems and for technical and administrative assistance or to carry out special projects or programs, except not more than 20 percent of the total funds may be allocated for technical and administrative services. The limitation on the use of cost-sharing funds for administrative and administrative services may be modified as provided in 3.0 of this policy.

2.0 Eligible Activities

The primary purpose of activities funded with Erosion Control and Water Management funds is to assist with structural or vegetative practices to correct existing problems. Specific preventative practices may also be allowed through policy or appropriation.

2.1 Practice Standards. All practices must be consistent with the NRCS Field Office Technical Guide (FOTG) or be professionally accepted engineering or ecological practices. Design standards for all practices must include specifications for operation and maintenance for the life of the given practice, including an inspection schedule and procedure. Practices where runoff or sediment from the contributing watershed prevents the practice from achieving the intended purpose with normal operation and maintenance are ineligible. Vegetative practices must follow the BWSR Native Vegetation Guidelines.

2.2 Effective Life. All structural practices must be designed and maintained for a minimum effective life of ten years. Vegetative practices must be designed to achieve water quality improvements or erosion or sedimentation control and be maintained for a minimum effective life of fifteen years. The beginning date for a practice's effective life is the same date final payment is approved and the project is considered complete.

2.3 Repair of Damaged Practices. Repair of damage to a conservation practice is eligible if the practice was installed using approved standards, damage was caused by reasons beyond the control of the land occupier, and damage or failure of the practice was not due to improper maintenance or removal of the practice within the effective life.

2.4 Ineligible Practices. Incentive payments for ongoing maintenance, writing of conservation plans, payments to adopt land management practices such as tillage or residue management, payments to cover crop damage during construction, payments to repair or install septic systems, payments for easements, and/or feedlot expansions are *not allowable practices with these funds*. These activities may be eligible for other grants available through BWSR.

3.0 Technical and Administrative Components

Erosion Control and Water Management funds may be used for technical and administrative expenses.

3.1 Technical and Administrative (TA) Expense. The BWSR Board has established the maximum amount allowed for TA expenses to be twenty percent (20%) of the total grant as provided in 1.0 of this policy. Remaining funds must be provided as cost share to achieve the purpose of these funds,

unless otherwise indicated in specific appropriation language. Districts may use up to 100% of the grant for TA when:

- federal funds will be leveraged and they couldn't do the project otherwise, or
- funds are used on a project that is State Cost Share Program or EQIP eligible and their most recent Financial Report indicates less than an 18-month fund balance, and
- approved by the Board Conservationist.

3.2 TA Activities. Activities eligible for TA include the following: grant administration, staff training to maintain appropriate technical approval authorities or licenses, site investigations and assessments, design and cost estimates, construction supervision, and inspections.

4.0 Cost Share Rates

Cost share rates represent the percent of the installation cost of a practice that may be provided to a land occupier for materials and labor necessary to install the practice. The BWSR Board establishes cost share rates through policy and implements these rates through grant agreements with Districts.

4.1 Maximum Rates. For the Erosion Control and Water Management Program, the BWSR Board has established the maximum cost share rate to a land occupier for installation of a practice at seventy-five percent (75%) of the installation cost, except for unused well sealing and practices installed for energy conservation and snow protection which are established at fifty percent (50%).

4.2 Match and In-Kind. A land occupier may provide the remainder of the installation cost through services, in-kind, or non-state or non-federal funds. The District board shall determine whether charges for in-kind services and materials are practical and reasonable. Standard rates for in-kind services should be identified in the conservation district's cost share program policy.

4.3 Local Rates. Prior to receiving any applications from land occupiers, conservation district boards may set different cost share rates up to the maximum identified in BWSR policy. These rates should be identified in the District's cost share program policy.

5.0 Technical Expertise

The District Board and staff have the responsibility to ensure that the designated technical staff have the appropriate technical expertise, skills and training for their assigned role(s). Appropriate expertise may include, but is not limited to, the following: conservation partnership Technical Approval Authority, professional licensure, reputable vendor with applicable expertise and liability coverage, or other applicable credentials, training and/or expertise.

5.1 Staff Skills. A description of staff skills, training, or credentials; or a description of other means the District will use to insure projects meet the requirements of this policy and are installed and maintained according to the standards and specifications of the practice(s) must be included in the District's cost-share program policy.

5.2 BWSR Review. BWSR reserves the right to review the licensure and credentials of all technical staff selected by the District where appropriate.

6.0 Expenditure of Funds on Practices and Contracts

BWSR finds that the District Board of Supervisors has the authority and responsibility to approve expenditure of funds within their own organization.

6.1 Cost Share Contract. A contract between the District and land occupier(s) receiving state funds is required to provide a legal standing to insure practices are installed and maintained according to approved standards and specifications. The required contract can be found on the BWSR website. Land occupier means a person, corporation, or legal entity that holds title to or is in possession of land as an owner, lessee, tenant, or otherwise. If the land occupier is not the landowner, the application must also bear the landowner's signature.

- a) **Contract Modifications.** Modifications to the contract may be made prior to execution and with prior approval from the District legal counsel and BWSR.
- b) **Contract Amendments.** Changes to an executed contract are considered an amendment to the contract and subject to review and approval by the District Board. The required amendment form can be found on the BWSR website. Prior to approving an amendment, technical staff must attest that the amendment has merit. Amendments shall not be considered or approved after the end of the contract or after approval to issue final payment on the original contract has been made. Amendments are limited to changes in practice specifications, installation dates, land occupier information, practice components, or cost share rates and amounts.
- c) **Group Projects.** Where the cooperation of several land occupiers is required for implementation of a project; and the land occupiers have agreed to the project, division of payments for the project, and signed a group project addendum to the cost-share contract; the District may enter into a contract with only the group spokesperson of the contract. A group project addendum form can be found on the BWSR website.
- d) **Projects that Cross a District Boundary.** If a project involves land in more than one District, application for the entire project must be made to the District containing the majority of the project lands.
- e) **Pooling cost-share allocation for joint projects.** District Boards may enter into an agreement to pool portions or all of their collective cost-share allocations to implement joint projects. Cooperative and joint projects may be undertaken to accomplish watershed-based resource management goals or other goals of mutual benefit as identified in the county's comprehensive local water plan or the District's comprehensive plan.

6.2 Contract Approval. District Boards must approve or deny the contract. The action taken must be documented in the District's meeting minutes. Approval of a contract is considered approval for expenditure of funds.

6.3 Projects where construction has begun prior to District Boards approval are ineligible for financial assistance.

6.4 Project Timeframe. District Boards have the authority to adopt timely starting and completion dates. Entering into a contract with a land **owner occupier** must occur within the grant period. Completion dates can be no longer than two years after approval of the District Board. Projects not completed within this timeframe must be cancelled unless prior written approval of the State board has been received.

6.5 Canceled Projects. Funds from canceled projects or remaining from completed projects ~~that did not use the full amount encumbered where the final cost was less than the estimated amount~~ may be re-encumbered ~~for projects to a new contract~~ as long as District Board approval occurs prior to the end of the grant period.

6.6 Removal of Practices. District Boards may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice and the purpose of the original practice has been achieved.

6.7 Delegation. District Boards may delegate signing contracts and supporting program documents to District staff. This delegation must be identified in the District's cost share program policy.

6.8 Recording Practices. The size, location, and effective life of the soil and water conservation practices that have received cost-share payments under this program equal to or in excess of \$50,000 shall be recorded by the conservation district on the property title. Instructions and forms for recording practices can be found on the BWSR website.

7.0 Practice Sign-off and Payment

Prior to payment, technical staff must attest that the practice was properly installed and completed according to the plans and specifications, including technically-approved modifications, and that vouchers and receipts are accurate. Project costs for the purposes of determining cost share amounts include the materials and labor necessary to complete the project.

7.1 Reimbursement. Land occupiers must incur all expenses for project implementation and provide vouchers and invoices or copies of paid receipts to verify all expenses prior to requesting reimbursement. A payment voucher form is available on the BWSR website.

- a) **Partial Payments.** Partial payments are allowed. Prior to authorization for partial payment, technical staff must attest to the District Board that the request for partial payment has merit, the payment request is equal to or less than the percent of construction that is complete, and that the project will still be completed within the contract timeline. Land occupiers not completing partially paid projects shall be considered as violating MN Rule, part 8400.1700 and shall be directed, unless otherwise authorized by the state board as provided elsewhere in this part, to return ~~the to the district~~ up to one hundred fifty percent (150%) of the amount of financial assistance received. All expenses incurred to correct damage caused by the land occupier's failure to expeditiously complete the project must be borne by the land occupier.
- b) **Service Charges.** District or Technical Service Area charges for services such as administration, field investigations, design, and monitoring to establish the practice shall not be included in calculating the project cost for purposes of determining cost-share payment amounts to the land occupier. Service charges such as tree planting or mechanical weed control are eligible to be included.
- c) **Actual Cost Different Than Estimated Cost.** In cases where the actual cost of the practice exceeds the estimated cost, the district may only share the additional amount when an amendment to the cost share contract has been approved per policy 6.1. Where the actual cost is less than the estimated cost, the conservation district shall only share the approved percentage of the actual cost of the practice.

7.2 Project Review. After receiving a request for final reimbursement, technical staff must review for each project; the as-built plan, vouchers, and invoices or copies of paid receipts submitted by the land occupier for completion and technical approval.

7.3 Combining Funding Sources. Payment amounts from combined state and federal sources shall not exceed the maximum cost share rate set by the BWSR Board in Section 4.0 of this policy. Calculation of payment amounts does not include incentive payments.

7.4 Final Plans. One copy of the final approved plan must be given to the land occupier and one copy retained with the project file located in the conservation district office.

8.0 Post-Construction and Follow-Up Activities

Identifying operation and maintenance activities specific to the installed practices is critical to ongoing performance of installed practices as well as to planning and scheduling those activities. Scheduled site inspections by qualified staff are necessary to ensuring operation and maintenance has been taking place.

8.1 Operation and Maintenance Plan. Qualified technical staff must prepare an operation and maintenance plan specific to the practice and the site where it is located. The operation and maintenance plan must detail the maintenance activities that are likely to be needed for practice and contributing watershed, specify how and when to accomplish them, and identify the inspection schedule. The plan should be prepared and reviewed with the land occupier before installation of the conservation practices begins.

8.2 Inspections. Qualified technical staff shall ensure that the operation and maintenance plan is being followed and the practices have not been altered or removed by conducting periodic site inspections. Inspections are to:

- a) Verify that all components of the practice remain in place and are in good repair, and/or
- b) Identify repairs necessary in accordance with the operation and maintenance plan; and/or
- c) Identify further assessment or action necessary if necessary repairs are beyond the scope of the operation and maintenance plan (need cross-reference to non-compliance policy).

8.3 Failure to Maintain Practices. Should the land occupier fail to maintain the practices during their effective life according to the operation and maintenance plan, the land occupier is liable to the State of Minnesota district for up to one hundred fifty percent (150%) of the financial assistance received to install and establish the practice as per MN Rule, part 8400.1700 as determined by the District board. Funds received by a district from a landowner who has failed to maintain a practice, must be used according to this policy and Minnesota Rules 8400.0050 to 8400.1900.

9.0 District Reporting Requirements

To ensure the continued success of the Erosion Control and Water Management Program, regular reporting of accomplishments and benefits is required. This reporting is accomplished through entries and documentation in eLINK. Guidance for reporting in eLINK is available on the BWSR website.

9.1 Annual Reporting. Districts must annually enter information on activities accomplished with the grant funding in eLINK. Reporting is required for grant fund expenditures from the prior calendar year and is to be completed by BWSR established reporting deadlines.

9.2 Grant Closeout Reporting. Within thirty (30) calendar days of the conclusion of each grant agreement or expenditure of all grant funds, whichever occurs first, Districts are required to provide the following to BWSR:

- a) Entry of information on all projects completed with the grant funding in eLINK;
- b) Signed Final Financial Report from eLINK;
- c) Documentation of District Board approval of the Final Financial Report; and
- d) Return any unspent or unencumbered funds, if applicable, as instructed on the Returned Check Form, found on the BWSR website.

9.3 Unencumbered Funds. Grant funds unencumbered by the District board after the grant period must be returned to the state board thirty (30) calendar days following the end of the grant period. Unencumbered funds are those funds remaining from cancelled projects or completed projects where the final cost was less than the estimated amount.

9.4 Records Retention. Project files must be retained by the District pursuant to Minnesota Statutes, §138.17 and consistent with ongoing records retention schedules.

9.5 Non-compliance with Reporting Requirements. Any District that does not complete these requirements will not be eligible to receive funds from this program until all past reporting has been completed. Financial penalties on the grant recipient may be applied.

10.0 BWSR Program Monitoring, Reconciliation, Verification and Penalty Procedures

10.1 Monitoring, Reconciliation, and Verification. BWSR will annually monitor all Districts reporting for compliance with reporting requirements of the Erosion Control and Water Management Program Policy above and will reconcile and verify all grants according to the June 22, 2011 current Grants Monitoring, Reconciliation, and Verification policy.

10.2 Penalties. Grant penalties can be applied when it has been determined the conservation district is not in compliance with relevant statutes, rules, and state policies. Noncompliance is ranked by the degree of departure from recommended administrative procedures to violations of rules, statutes, or grant agreements. Penalties may include the district requiring a land occupier to return the cost-share funds received, the district repaying the State with non-state funds, and/or the district taking a yearly reduction in cost-share grant payments(s) until the violation amount is satisfied. Minnesota Statutes, §103C.401 establishes BWSR's obligation to assure program compliance.

- a) All state base grants (State Cost Share, Easement Services, and General Services) for which funding is requested may be reduced by five percent if satisfactory comprehensive or annual plans are not received by the annual deadline, with an additional five percent reduction for each month late. No base grant funds will be allocated until a satisfactory plan is received.
- b) If the state becomes aware of cases where a conservation district knowingly participates in accepting fraudulent receipts or invoices to calculate cost-share claims, the state may deny future cost-share funds for the conservation district.

11.0 District Cost Share Program Policies

The following items are recommended to be identified in local cost share program policies, either on a project-by-project or annual basis:

- a) Identify or describe available staff skills, training, credentials, or other means the District will use to insure projects are installed and maintained according to standards and specifications (see policy 5.)
- b) Set District cost share rates to be less than or equal to rates set by the State Board (see policy 4.)
- c) Establish maximum flat rates for in-kind services and materials provided by land occupiers (see policy 4.)
- d) Identify practice standards to be used for design, construction, operation, and maintenance (see policy 2.)
- e) Set criteria for project selection, i.e. priority watershed or location, priority practices, recording practices, consideration of other activities in the area, etc. (see policy 6)
- f) Establish a process and local policy for addressing cost-share contract noncompliance (see policy 6).
- g) Other policies as necessary and applicable to the program.

For additional guidance see the BWSR Grants Manual at:

<http://www.bwsr.state.mn.us/grants/manual/index.php#/Purpose%20&%20Scope/7/top>



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: 2013 BWSR Board Meeting Schedule¹

Meeting Date: _____

Agenda Category: ☐ Committee Recommendation ☒ New Business ☐ Old Business

Item Type: ☐ Decision ☐ Discussion ☐ Information

Section/Region: _____

Contact: _____

Prepared by: Mary Jo Anderson

Reviewed by: John Jaschke Committee(s)

Presented by: John Jaschke

☐ Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: ☒ Resolution ☐ Order ☐ Map ☐ Other Supporting Information

Fiscal/Policy Impact

☐ None

☐ Amended Policy Requested

☐ New Policy Requested

☐ General Fund Budget

☐ Capital Budget

☐ Outdoor Heritage Fund Budget

☐ Clean Water Fund Budget

☐ Other: _____

ACTION REQUESTED

Approval of the proposed 2013 BWSR Board Meeting dates.

SUMMARY (*Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation*)

The BWSR Board meets the fourth Wednesday of each month unless noted on the attached '2013 BWSR Board Meeting Schedule'.



Board Resolution # _____

Proposed 2013 BWSR Board Meeting Schedule

(Fourth Wednesday of the month unless noted)

January 23

February - no meeting

March 27

April 24

May 22

June 26

July – no meeting

August 28-29 - Tour and Meeting

September 25

October 23

November – no meeting

December 18

Date _____

Brian Napstad, Chair
Minnesota Board of Water and Soil Resources



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: 2012 STRATEGIC PLAN REPORT CARD¹

Meeting Date: October 24, 2012

Agenda Category: ☐ Committee Recommendation ☐ New Business ☐ Old Business
Item Type: ☐ Decision ☐ Discussion ☒ Information
Section/Region: Statewide
Contact: Don Buckhout
Prepared by: Steve Woods, Don Buckhout
Reviewed by: Public Relations, Outreach & Strategic Planning Committee(s)
Presented by: Don Buckhout

☐ Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: ☐ Resolution ☐ Order ☐ Map ☒ Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| | <input type="checkbox"/> Clean Water Fund Budget |
| <input type="checkbox"/> Other: _____ | |

ACTION REQUESTED

Receive Report

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

In January 2012 BWSR approved an update of the 2007 strategic plan. While this plan does not address all the work and accomplishments of the agency, it identifies and focuses on issues needing particular attention. At the time the 2012 Update was approved, the Public Relations, Outreach and Strategic Planning Committee made a commitment to provide annual updates to the Board of progress on strategic issues. This 2012 Strategic Plan Report Card identifies accomplishments to date on each of the action items in the plan.

The report card document will be distributed at the Board meeting.



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: BWSR 25th Anniversary¹

Meeting Date: October 24, 2012

Agenda Category: ☐ Committee Recommendation ☒ New Business ☐ Old Business
Item Type: ☐ Decision ☐ Discussion ☒ Information
Section/Region: _____
Contact: _____
Prepared by: Jen Maleitzke
Reviewed by: John Jaschke Committee(s)
Presented by: Jen Maleitzke

☒ Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: ☐ Resolution ☐ Order ☐ Map ☒ Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

For your information, 25 years of BWSR

SUMMARY (*Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation*)

This brief presentation will highlight BWSR's history and will outline some of BWSR's accomplishments over the past 25 years, including BWSR's role in the Wetland Conservation Act, Conservation Reserve Enhancement Program and supporting LGUs through local water planning.



Celebrating 25 years of BWSR: 1987-2012

The Minnesota Board of Water and Soil Resources (BWSR) was created in 1987, when the Legislature combined the Soil and Water Conservation Board with two other organizations with local government and natural resource ties: the Water Resources Board and the Southern Minnesota Rivers Basin Council.

Legislation establishing the Board of Water and Soil Resources (reflected in Minnesota Statutes 103B.101) outlined its responsibilities to a variety of local governments. Upon inception, its membership included 17 members: three representing soil and water conservation districts; three representing watershed management organizations or watershed districts; three representing counties; three citizen members; and five agency members representing the University of Minnesota Extension Service, the Minnesota Department of Natural Resources, the Minnesota Department of Agriculture, the Minnesota Department of Health, and the Minnesota Pollution Control Agency. The board expanded in 2009 to include two representatives of cities (one in the Twin Cities Metro Area and one in Greater Minnesota) and one township representative.

BWSR's mission is to improve and protect Minnesota's water and soil resources by working in partnership with local organizations and private landowners.

1937	1950	1955	1967	1971	1975	1982	1987
State Soil Conservation Committee established to organize soil and water conservation districts throughout the state, providing promotional, financial and administrative assistance.	State Soil Conservation Committee became part of the University of Minnesota Soils Dept.	Water Resources Board established.	State Soil Conservation Committee name changed to Soil and Water Conservation Commission.	Southern Minnesota Rivers Basin Council established. Soil and Water Conservation Commission transferred from U of M to DNR.	Soil and Water Conservation Commission name change to Soil and Water Conservation Board.	Soil and Water Conservation Board transferred from DNR to MDA.	Minnesota Board of Water and Soil Resources was created by combining the Soil and Water Conservation Board with the Water Resources Board and the Southern Minnesota Rivers Basin Council.

2012 BWSR administers programs that prevent sediment and nutrients from entering our lakes, rivers and streams, enhance fish and wildlife habitat and protect wetlands. The board sets a policy agenda designed to enhance service delivery through the use of local government, including 90 soil and water conservation districts, 46 watershed districts, 23 metropolitan watershed management organizations and 80 county water managers.